

Volume 7

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION,

NO. 21-md-02981-JD

THIS DOCUMENT RELATES TO:

EPIC GAMES, INC.,

Plaintiff,

VS.

NO. 3:20-cv-05671-JD

GOOGLE, LLC., et al.,

Defendants .

San Francisco, California
Tuesday, November 14, 2023

TRANSCRIPT OF PROCEEDINGS

STENOGRAPHICALLY REPORTED BY:

Kelly Shainline, CSR 13476, RPR, CRR
Official United States Reporter

APPEARANCES:

For Plaintiff:

CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, New York 10019

BY: GARY BORNSTEIN, ATTORNEY AT LAW
YONATAN EVEN, ATTORNEY AT LAW
LAUREN MOSKOWITZ, ATTORNEY AT LAW
MICHAEL ZAKEN, ATTORNEY AT LAW
ANDREW WIKTOR, ATTORNEY AT LAW

HUESTON HENNIGAN LLP
620 Newport Center Drive, Suite 1300
Newport Beach, California 92660

BY: DOUGLAS J. DIXON, ATTORNEY AT LAW

For Defendants:

MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue - 50th Floor
Los Angeles, California 90071

BY: GLENN POMERANTZ, ATTORNEY AT LAW
JAMIE LUGURI, ATTORNEY AT LAW

MUNGER, TOLLES & OLSON LLP
601 Massachusetts Avenue NW
Suite 500 East
Washington, DC 20001

BY: JONATHAN KRAVIS, ATTORNEY AT LAW
LAUREN BELL, ATTORNEY AT LAW

MORGAN, LEWIS & BOCKIUS LLP
One Market - Spear Street Tower
San Francisco, California 94105

BY: MICHELLE PARK CHIU, ATTORNEY AT LAW

MUNGER, TOLLES & OLSON LLP
560 Mission Street - 27th Floor
San Francisco, California 94105

BY: DANE P. SHIKMAN, ATTORNEY AT LAW

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9:26 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

THE COURT: This is a special treat. I'm going to call the case.

It's the MDL number; right?

Calling 21-md-02981.

Okay. Just the one appearances.

You-all wanted to chat about something before the witness comes out. One appearance per side, yeah.

MR. BORNSTEIN: Yes, Your Honor. Gary Bornstein for Epic Games.

THE COURT: Okay. Defendant?

MR. POMERANTZ: Glen Pomerantz on behalf of Google, Your Honor.

THE COURT: All right. What's the issue?

MR. BORNSTEIN: Your Honor, we have just a couple things. One is -- two of them relate to the very first witness this morning and one relates to a witness this afternoon. I'm going to let Ms. Moskowitz handle the issues for the first witness.

THE COURT: All right.

MS. MOSKOWITZ: Good morning, Your Honor.

With respect to Mr. Pichai, who's our first witness this

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1 morning, we have one document issue and one sealing issue over
2 actually just two numbers. No documents. I've already agreed
3 I don't need to use a document. I just need to use two
4 numbers. But the document there's an objection to. I can hand
5 it up and explain what our issues are.

6 **THE COURT:** Wait. Wait. There is an issue or not an
7 issue with this number?

8 **MS. MOSKOWITZ:** The number is in a separate issue.
9 The document that I would like to get in has no sealing issue.
10 It's a public blog post that Google -- that Mr. Pichai wrote
11 and posted on behalf of Google that Google objects to.

12 **THE COURT:** All right. Hand that to Ms. Clark,
13 please.

14 **MS. MOSKOWITZ:** Yes.

15 **THE COURT:** Okay. So what is this? Public policy
16 blog.

17 **MR. POMERANTZ:** Your Honor, I guess since we're the
18 one moving to not have this used at trial, we're objecting both
19 on relevance grounds, 402; and also on confusion grounds, 403.

20 So this was written in 2009.

21 **MS. MOSKOWITZ:** Your Honor, maybe if I can explain
22 what I'm trying to do with it.

23 **THE COURT:** Hold on. Let Mr. Pomerantz finish.
24 Go ahead.

25 **MR. POMERANTZ:** This was written in 2009, and it

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1 concerns the European Commission's investigation of Microsoft
2 in connection with its business practices relating to Windows
3 and Internet Explorer. We went over this at length in the
4 deposition.

5 And the battle here is we don't think there's anything
6 comparable between the two situations, and they do, and they
7 do. And so what we're going to be fighting with in front of
8 the jury is: Is this Microsoft situation from 14 years ago
9 comparable to what we're facing here or not? And we think it's
10 going to be a total distraction to the jury. It's irrelevant
11 whether Microsoft -- what Microsoft did.

12 And what Mr. Pichai was addressing was very specifically
13 what was going on with Windows and Internet Explorer, which he
14 believes is very different than what we're facing today with
15 mobile phones. And he explained that in his deposition, and so
16 we know what the battle is going to be; and we think it's both
17 irrelevant whether this is comparable to Microsoft or not --

18 **THE COURT:** I'm guessing -- I'm just guessing -- that
19 there's something in here to the effect that preinstallation
20 and default status is exclusionary or something like that.

21 **MS. MOSKOWITZ:** Yes. He's complaining about Microsoft
22 Windows tying the Internet Explorer, requiring preinstall,
23 requiring defaults, and how that harms competition, innovation,
24 stifles consumer choice. All of the things that we are
25 alleging here he has exactly said out of his own mouth when

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1 they were the new entrant in a market.

2 **THE COURT:** And which specific sections do you want to
3 use?

4 **MS. MOSKOWITZ:** So really it's just the two pages, not
5 any of these comments that people are listing after it. The --
6 specifically the "Here's Why" and he gives multiple reasons why
7 they are joining the fight against Microsoft conduct and how it
8 hurts competition. So really --

9 **THE COURT:** What sentence do you want to use?

10 **MS. MOSKOWITZ:** A few. He says browsers are critical
11 to the Internet and how they enable them to -- users to surf
12 the web, et cetera, and they are so central to the experience
13 that they're crucial to innovation online. Same things are
14 true about apps and app stores today.

15 **THE COURT:** Well, okay. That one -- all right.
16 What's the next one?

17 **MS. MOSKOWITZ:** That the uncompetitive market holds
18 back innovation and that Explorer is tied to a dominant
19 computer operating system that gives them an unfair advantage,
20 which is exactly what's happening here.

21 He compares it to the mobile market as it existed back
22 then where you couldn't actually take advantage of a dominant
23 operating system, Microsoft couldn't, and then they had lower
24 usage, which shows that when you don't have to get forced to
25 use the dominant --

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1 **THE COURT:** I don't need the explanations.

2 Okay. So the next section is -- okay.

3 **MS. MOSKOWITZ:** And it continues "even greater
4 competition will drive more innovation."

5 **THE COURT:** "This is because IE is tied to dominant
6 computer system giving it..."

7 Okay. What's the third one?

8 **MS. MOSKOWITZ:** That paragraph continues "Greater
9 competition will drive more innovation." And then he says that
10 at the end "We're confident that more competition will mean
11 greater innovation on the web and a better user experience."

12 **THE COURT:** Okay. I'll tell you what. Here's what
13 you can do. You can ask -- and don't introduce this in the
14 first instance. You can ask him questions: Isn't it true that
15 you think preinstalling an app when you're a dominant player
16 is, you know, not good for users? Or something like that. And
17 then depending on his answers, you can impeach him.

18 The first one, though, you know, browsers and apps are
19 sufficiently different that you can say -- if you set the
20 question up the right way, it might be impeachment; but -- you
21 can use it for impeachment -- okay? -- but you cannot use it as
22 a direct exam exhibit. Okay?

23 **MS. MOSKOWITZ:** Am I allowed to ask about comparisons
24 between Windows back from 2009 and today?

25 **THE COURT:** I will listen carefully and if I think no,

1 I'll just say "sustained."

2 **MS. MOSKOWITZ:** Okay.

3 **THE COURT:** That takes care of that. What's the next
4 one?

5 **MS. MOSKOWITZ:** There's two issues with respect to
6 numbers that -- about Apple, and Google has said that they
7 object to us saying two things. One is the revenue share
8 percentage that Apple is paid by Google for Search on IOS
9 devices and the total billions of dollars that that translates
10 to each year.

11 The percentage --

12 **THE COURT:** For what? For --

13 **MS. MOSKOWITZ:** For Search rev share on IOS devices,
14 which goes to show Apple and Google are not exactly competing
15 in the way that Google is leading the jury to believe.

16 **THE COURT:** Oh. That's seems fine.

17 **MR. POMERANTZ:** Your Honor, may I be heard on that?
18 Also, Apple's counsel's here.

19 So the agreement between Google and Apple relating to
20 Search -- it has nothing to do with Android or Play -- is
21 central to the case in Washington, D.C., the Search case.
22 That's at the center of that case.

23 It is very tangential to this case. What we have said to
24 Epic's counsel is if they want to ask Mr. Pichai or another
25 witness: Do you have an agreement with Apple relating to

1 search? Yes. Do you have -- do you share revenue? Yes. How
2 much do you pay Apple? Billions of dollars. We're okay with
3 that because that's not disclosing the confidential terms of
4 the agreement.

5 The judge in D.C. has already ruled that --

6 **THE COURT:** Okay. That's not me. All right? So --

7 **MR. POMERANTZ:** No, I understand that.

8 **THE COURT:** -- I'm not interested in that part --

9 **MR. POMERANTZ:** Okay. I hear you, Your Honor.

10 **THE COURT:** -- because this is my case and my rules.
11 All right? These are different cases, different courts,
12 different rules, different judges, different circuits. So
13 don't go into that.

14 But let me ask you: You just want to put a number in
15 front of the billion?

16 **MS. MOSKOWITZ:** I want to put a number in front of a
17 billion, and I --

18 **THE COURT:** Don't put the number up with your fingers.

19 **MS. MOSKOWITZ:** Not that number. Trust me, it's not
20 that number. I want to put the number --

21 **THE COURT:** You're making me nervous. You said, "Yes,
22 I'm going to put this number up."

23 **MS. MOSKOWITZ:** I promise that was not the number.

24 I would like to put the number in front of the billions
25 and the percentage revenue share, which actually was just

1 published yesterday in the DOJ trial.

2 **THE COURT:** That's fine. You can do that and here's
3 why: You-all have made competition with Apple the centerpiece
4 of your case, so it's perfectly fair for Google -- for Epic to
5 say: How much of a competitor can you be when you're getting
6 this amount of money from each other?

7 **MR. POMERANTZ:** And, again, we're not disputing them
8 putting that in front. We actually don't think it's
9 particularly relevant, but I understand Your Honor's ruling.
10 But there's really nothing particularly relevant to the jury
11 between hearing billions of dollars, any specific number.

12 **THE COURT:** I don't agree with that. An exact number
13 gives a much greater weight and feel to the volume and
14 significance of the transaction.

15 **MR. POMERANTZ:** And what about the percentage revenue
16 share, Your Honor? That's also a very confidential number.
17 Ms. Moskowitz is correct, that an expert inadvertently just
18 said a number yesterday, which is being moved to be sealed
19 yesterday; but we --

20 **THE COURT:** If the number is out, the number is out.

21 **MR. POMERANTZ:** It's not -- Your Honor, it's not out
22 in any way that Google has authorized, and it is right now
23 under consideration in D.C. So it's not really out. And I
24 would also say that I don't know that it's necessarily the
25 correct number.

1 **THE COURT:** Let me ask you this: The revenue share
2 part doesn't seem all that relevant. I mean, the absolute
3 dollar value, okay, I can see that.

4 **MS. MOSKOWITZ:** Can I explain why?

5 **THE COURT:** Why the details about how that's
6 calculated?

7 **MS. MOSKOWITZ:** Very few details, Your Honor, just one
8 number. And it is relevant because the jury has heard a lot
9 about what -- the revenue share percentages with the OEMs
10 within the Android system itself, and this compares to that in
11 a meaningful way.

12 And so the fact that they are --

13 **THE COURT:** But Apple is not OEM -- Apple is not an
14 Android OEM.

15 **MS. MOSKOWITZ:** Exactly. Their biggest competitor,
16 according to them, is getting X percent and their own OEMs that
17 they're supposedly investing in and doing all of this work to
18 try to compete against Apple are getting Y percentage.

19 **THE COURT:** Is there a significant difference?

20 **MS. MOSKOWITZ:** Yes, Your Honor. Meaningful.

21 **MR. POMERANTZ:** Your Honor --

22 **THE COURT:** It's relevant.

23 **MR. POMERANTZ:** -- what they're talking about is
24 Search revenue. It has nothing to do with Play. Nothing to do
25 with Android.

1 **THE COURT:** Yes, at a granular level search and apps
2 are different, but we're talking about the relationship level
3 and the point that these professed fight-to-the-death enemies
4 may have a lot more in common.

5 **MR. POMERANTZ:** Her argument is they want to compare
6 the revenue percentage in the Apple agreement to the revenue
7 percentages in the OEM -- in the Android OEM agreements when
8 they're measuring two different things. They're two different
9 pots.

10 **THE COURT:** You're going to bring that out in cross.
11 You know, you're not prevented in any way from saying anything
12 you want in response to that.

13 Okay. You can do both. All right? But don't --

14 **MS. MOSKOWITZ:** Your Honor, one more issue, if you
15 don't mind, for another today witness.

16 **THE COURT:** Yes.

17 **MR. POMERANTZ:** Your Honor, if I can just say, Apple's
18 lawyer is here, and I think they do want to at least be heard
19 on that if Your Honor would take their argument.

20 **THE COURT:** I've already ruled.

21 **MR. POMERANTZ:** They have filed a motion.

22 **THE COURT:** All right. When did I get that?

23 Yes?

24 **MR. LOEW:** Good morning, Your Honor. Jason Loew from
25 Gibson, Dunn & Crutcher on behalf of Apple.

1 We don't have a dog in the fight in terms of relevance or
2 in terms of prejudice. However, all we're asking is that
3 particularly on the revenue share, the number appears on the
4 face of the document, and so we're just asking that if it can
5 be shown to the jury and shown to the witness without
6 broadcasting the number to the public.

7 **THE COURT:** I know you're asking that, but you
8 can't -- you can't just ask that. This is a courtroom of the
9 people of the United States. I cannot keep saying this because
10 it doesn't seem to be sinking in. This is a courtroom of the
11 people of the United States. We do business in bright light
12 and open windows and doors. Okay? There's no secrets unless,
13 unless there is a compelling reason supported by a specific
14 showing of facts. And just coming in and saying "We're kind of
15 sensitive about this" isn't going to fly.

16 **MR. LOEW:** I understand, Your Honor. And what we put
17 in our declaration last night was that, in fact, Apple has
18 similar type agreements with other companies, including
19 Google's competitors, and so the concern is these -- all of
20 these contracts come up for negotiation from time to time and
21 the terms are hard fought; and so having this out in the open
22 so that Google's competitors know what the rates are that
23 Google and Apple have negotiated puts Apple at an artificial
24 disadvantage.

25 **THE COURT:** Google's competitors for what? For

1 search? For browsers?

2 **MR. LOEW:** Correct.

3 **THE COURT:** Okay. Well, I mean, who is that?

4 **MR. LOEW:** It would be, for example, companies like
5 Yahoo!

6 **THE COURT:** Okay. Well, you know, the answer is no.
7 You can use it.

8 Okay. Let's get the jury up.

9 What about this deposition thing?

10 **MS. MOSKOWITZ:** Amazon?

11 **THE COURT:** That's not -- that's for later today?
12 Donn Morrill?

13 **MR. BORNSTEIN:** Yes, Your Honor. I'm sorry. I didn't
14 hear your question, however.

15 **THE COURT:** This is for later today?

16 **MR. BORNSTEIN:** We can -- if we have time later today,
17 we may play that if there is time permitting, yes.

18 **THE COURT:** All right. But after lunch?

19 **MR. BORNSTEIN:** Certainly after lunch.

20 **THE COURT:** All right. Good.

21 **MR. BORNSTEIN:** And that's the 30(b)(6) witness from
22 Amazon.

23 **THE COURT:** Yes.

24 **MR. BORNSTEIN:** Thank you.

25 (Proceedings were heard in the presence of the jury:)

1 **THE CLERK:** Calling Civil 20-5671, Epic Games, Inc.
2 vs. Google LLC, and Multidistrict Litigation 21-2981, In re
3 Google Play Store Antitrust Litigation.
4 Counsel.

5 **MR. BORNSTEIN:** Good morning, Your Honor. Gary
6 Bornstein for Epic Games. With me today is Michael Zaken,
7 Andrew Wiktor, Lauren Moskowitz, and Yonatan Even.

8 **MR. POMERANTZ:** Good morning, Your Honor.
9 Glenn Pomerantz on behalf of Google, and with me today is
10 Michelle Park Chiu, Jonathan Kravis, Steve Sparling, Lauren
11 Bell, and Dane Shikman, and Jamie Luguri.

12 **THE COURT:** Okay. Come on up.
13 Ladies and gentlemen of the jury, this witness needs to
14 stand for just physical purposes so he'll be right there.
15 Yeah, come up.

16 **MS. MOSKOWITZ:** Your Honor, Epic calls Sundar Pichai.

17 **THE CLERK:** Please raise your right hand.

18 **SUNDAR PICHAI,**
19 called as a witness for the Plaintiff, having been duly sworn,
20 testified as follows:

21 **THE WITNESS:** Yes, I do.

22 **THE CLERK:** Thank you.

23 **THE COURT:** Please.

24 **THE CLERK:** Can you please state your full name for
25 the Court and spell your last name?

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1 **THE WITNESS:** Sundar Pichai, P-I-C-H-A-I.

2 **THE CLERK:** Thank you.

3 **MS. MOSKOWITZ:** Thank you, Your Honor.

4 **DIRECT EXAMINATION**

5 **BY MS. MOSKOWITZ:**

6 **Q.** Good morning, Mr. Pichai.

7 **A.** Good morning.

8 **Q.** You are currently the CEO of Google?

9 **A.** That's correct.

10 **Q.** And you are also CEO of Google's parent company Alphabet?

11 **A.** Yes.

12 **Q.** You became CEO of Google in October of 2015; is that
13 correct?

14 **A.** Correct.

15 **Q.** And as CEO, you are directly or indirectly responsible for
16 all business decisions at Google; right?

17 **A.** That's correct.

18 **Q.** And that would include decisions involving Android and
19 Google Play that we're talking about in this trial?

20 **A.** Yes.

21 **Q.** Before becoming CEO, you were head of Android and
22 Google Play; right?

23 **A.** That's correct.

24 **Q.** And you became head of Android and Google Play in around
25 March 2013?

1 **A.** That's right. Just before CEO, I was the head of all of
2 our products and services. Before that, I was the head of
3 Android and Chrome and Apps.

4 **Q.** And when you took over Android and Google Play, you became
5 responsible for those businesses; right?

6 **A.** That's correct.

7 **Q.** So fair to say for the past 10 years or so you have had
8 responsibility over Android and Google Play?

9 **A.** Yes, indirectly through -- I have other executives
10 overseeing the area; but as you said, I'm responsible for them.

11 **Q.** All right. I'd like to start by asking you about your
12 practices when it comes to making business records and
13 retaining those records.

14 You are familiar with the concept of attorney-client
15 privilege; yes?

16 **A.** Yes.

17 **Q.** And there have been occasions where you have marked
18 e-mails privileged, not because you were seeking legal advice
19 but just to indicate that they were confidential; correct?

20 **A.** Occasionally, yes.

21 **Q.** And so you have marked documents attorney-client privilege
22 even when you're not seeking legal advice to indicate that the
23 document should remain confidential internally?

24 **A.** That's correct.

25 **Q.** Has anyone ever sat you down and told you that's wrong?

PICHAI - DIRECT / MOSKOWITZ

1 A. What I was instructed --

2 Q. Sir, I just want to know if you were told that that was
3 wrong.

4 A. I -- I was only instructed to copy my attorney and ask for
5 advice if I needed legal advice, which I did. Sometimes I
6 would just use the word "privilege" just to keep it
7 confidential so the e-mails wouldn't get forwarded beyond --

8 Q. Right. So just to understand, sometimes you actually are
9 seeking legal advice?

10 A. That's correct.

11 Q. And you use the same words, "privileged" and
12 "confidential" even when you're not seeking legal advice
13 sometimes? Yes or no.

14 A. I use different words typically, but...

15 Q. You use the word "privileged" even when you're not
16 actually asking for legal advice; correct?

17 A. Yeah, but I wouldn't ask --

18 Q. Sir, yes, you've done that?

19 CERTIFIED STENOGRAPHIC REPORTER: One at a time,
20 please.

21 MS. MOSKOWITZ: Yes.

22 BY MS. MOSKOWITZ:

23 Q. I will ask you for answers and your attorney will have a
24 chance to ask you for longer answers.

25 A. I'm just trying to give context, that's all.

1 Q. I don't need the context. I just need the answer. I'm
2 sure people don't interrupt you much in your day-to-day life,
3 but I'm going to do that here and your counsel will have a
4 chance. Okay?

5 So you have used the words "confidential" and "privileged"
6 in an e-mail even when you are not seeking legal advice; yes?

7 A. Sometimes, yes.

8 Q. Yes. And has anyone told you that that is not correct,
9 that that is wrong? Yes or no.

10 A. Not that I recall.

11 Q. Do you understand today, not sitting here but standing
12 here today, that you should not actually be doing that, do you?

13 A. Yes.

14 Q. All right. So do you understand that you should only be
15 marking documents attorney-client privilege when you are
16 actually, in fact, seeking legal advice?

17 A. Yes.

18 Q. Google Chat is an instant message app used by Google
19 employees; right?

20 A. That's correct.

21 Q. You, yourself, have used Google Chat for business
22 purposes?

23 A. Yes.

24 Q. And you have used Google Chat to discuss business issues
25 since this case was filed in August of 2020; right?

1 A. That's correct.

2 Q. You are familiar with the history settings in Google Chat;
3 right?

4 A. Yes.

5 Q. And when history is on, chats are saved?

6 A. That's correct.

7 Q. And when history is off, chats are permanently deleted
8 after 24 hours; right?

9 A. That's correct.

10 Q. You have received multiple litigation hold notices over
11 the course of your time at Google; right?

12 A. That's correct.

13 Q. And you received a litigation hold notice in connection
14 with this case; right?

15 A. Yes.

16 Q. And a litigation hold notice is a notice from your
17 employer instructing you to preserve documents that may be
18 relevant to a lawsuit; right?

19 A. That's correct.

20 Q. And you knew that when you received a litigation hold
21 notice or a legal hold notice, you were required to preserve
22 documents that might be relevant to that lawsuit?

23 A. That's correct.

24 Q. And you knew that you were required to preserve instant
25 messages that may be relevant to the lawsuit?

1 **A.** That's correct.

2 **Q.** Now, you personally -- for your legal hold in this case,
3 you personally did not do anything to change your default
4 setting to history on for your one-on-one in group chats;
5 correct?

6 **A.** No, because I didn't use Google Chats sub- --

7 **Q.** Sir, you did not do anything to change your default
8 setting to history on for your one-on-one in group chats;
9 correct? Yes or no.

10 **A.** With respect to this case? I'm sorry. I'm trying to
11 understand the question.

12 **Q.** With respect to this case, fine.

13 With respect to this case, you personally did not do
14 anything to change your default setting to history on for your
15 one-on-one in group chats?

16 **A.** No.

17 **Q.** And you are aware, are you not, that during the entire two
18 and a half years that discovery was going on in this case and
19 Google was producing documents, including yours, that history
20 remained off by default; right?

21 **A.** That's correct.

22 **Q.** So that means by default your one-on-one chats were
23 deleted automatically every 24 hours; right?

24 **A.** That's my understanding, yes.

25 **Q.** Kent Walker is Google's chief officer; correct?

1 A. That's correct.

2 Q. And when you as CEO are actually seeking legal advice, you
3 would typically ask Mr. Walker for that advice; right?

4 A. Typically, yes.

5 Q. And you rely on Mr. Walker to make sure that Google is
6 complying with its obligation to preserve documents in
7 connection with litigation; right?

8 A. That's correct.

9 Q. So in your view, with respect to how Google complies with
10 its legal obligations, is it fair to say that the buck stops
11 with Mr. Walker?

12 A. That's correct.

13 Q. All right. Please turn -- do you have a binder in front
14 of you, sir?

15 A. Yes.

16 Q. Can you please turn to Exhibit 8030? And let me know when
17 you're there, please.

18 A. Can you say the exhibit number again, please?

19 Q. 8030, please.

20 A. (Witness examines document.)

21 Q. Do you have that open in front of you, sir?

22 A. Yes.

23 Q. This is an e-mail chain that begins in the middle of the
24 first page. It's sent September 16th, 2008. Do you see that?

25 A. Yes.

1 Q. And the signature for this e-mail at the second page at
2 the top includes Kent Walker. Do you see that?

3 A. (Witness examines document.) Yes, I do.

4 MS. MOSKOWITZ: Your Honor, I move Exhibit 8030 into
5 evidence.

6 MR. POMERANTZ: No objection, Your Honor.

7 THE COURT: It is admitted.

8 (Trial Exhibit 8030 received in evidence.)

9 MS. MOSKOWITZ: All right. Let's put that on the
10 screen.

11 BY MS. MOSKOWITZ:

12 Q. So we just talked about Kent Walker. There's another
13 individual who signed this. Is it Bill Cochran?

14 A. Bill Coughran.

15 Q. Coughran, yeah. I knew I was going to get that wrong.

16 Bill Coughran, he was a senior leader in engineering at
17 the time of this e-mail?

18 A. That's correct.

19 Q. All right. So let's go to the beginning of this e-mail.

20 This was addressed to Googlers. Do you see that?

21 A. That's correct.

22 Q. This e-mail went out to all Google employees in 2008;
23 right?

24 A. That's correct.

25 Q. That included you?

1 A. Yes.

2 Q. All right. The e-mail begins (as read):

3 "As you know, Google continues to be in the midst of
4 several significant legal and regulatory matters," and it
5 continues.

6 Do you see that?

7 A. Yes.

8 Q. And the last sentence of that first paragraph says (as
9 read):

10 "So we've got two requests and one change."

11 Do you see that? It's also on the screen, sir, if that's
12 helpful to you.

13 A. Oh, yes.

14 Q. Okay. That's great.

15 So do you see where I am?

16 A. Yes.

17 Q. It says (as read):

18 "We've got two requests for you, all you Googlers,
19 and one change to announce."

20 Right?

21 A. Yes.

22 Q. So the first request starts at the next paragraph, and
23 we'll put that up on the screen.

24 It says (as read):

25 "First, please write carefully and thoughtfully.

1 We're an e-mail and instant messaging culture. We conduct
2 much of our work online."

3 Do you see that?

4 **A.** Yes.

5 **Q.** So even back then instant messages were an important
6 business communication tool used by Googlers to conduct their
7 day-to-day business; right?

8 **A.** That's correct.

9 **Q.** Now, the e-mail then warns Googlers (as read):

10 "Anything you write can become subject to review in
11 legal discovery."

12 Do you see that?

13 **A.** Yes.

14 **Q.** Now, jumping ahead three sentences later, it says (as
15 read):

16 "So please do think twice before you write about hot
17 topics."

18 Do you see that?

19 **A.** That's correct.

20 **Q.** The second request to Googlers starts at the next
21 paragraph. It starts "Second." Do you see where I am?

22 **A.** Yes.

23 **Q.** And it says (as read):

24 "Remember that these same rules apply not just to
25 Gmail but also to Google Talk and all other forms of

1 electronic communications."

2 Do you see that?

3 **A.** Yes.

4 **Q.** And Google Talk was the name of the instant messaging or
5 chat application at the time of this e-mail?

6 **A.** That's correct.

7 **Q.** Now we get to the change.

8 The following paragraph announces the change that the
9 e-mail referenced; right? Do you see where I am?

10 **A.** Yes.

11 **Q.** The paragraph says (as read):

12 "To help avoid inadvertent retention of instant
13 messages, we have decided to make off the record the
14 Google corporate default setting for Google Talk."

15 Do you see that?

16 **A.** That's correct.

17 **Q.** So Google was announcing here to all of the entire company
18 that it was switching the default history setting in the Chat
19 messaging application to off for all of its employees; right?

20 **A.** That's correct.

21 **Q.** And it was saying it was doing that specifically to avoid
22 retaining those documents; right?

23 **A.** There were a few other reasons given in the document. I'm
24 happy to go back and mention it.

25 **Q.** Well, let's look at what that said right here (as read):

1 "To help avoid inadvertent retention of instant
2 messages, we're changing the setting."

3 That's what it says right here; right?

4 **A.** It said more in the previous --

5 **Q.** Sir, yes?

6 **A.** It says more in the previous paragraph.

7 **Q.** Sir, the reason it gives for --

8 **A.** The previous paragraph --

9 **Q.** Sir --

10 **A.** -- has more details so I'm just trying to give that --

11 **THE COURT:** Okay. One at a time. Let's let the
12 witness finish his answer, and then you can follow-up. Go
13 ahead.

14 **BY MS. MOSKOWITZ:**

15 **Q.** Sir, what I'm reading --

16 **THE COURT:** Let the witness finish his answer.
17 Go ahead.

18 **THE WITNESS:** Originally in the paragraph it stated a
19 reason. In addition to legal discovery, you know, we have
20 employees in over 1 million groups, they could be misconstrued
21 or misunderstood. Google had an open-communication culture in
22 which people who didn't work on the involved teams could
23 communicate on products. So this was educating them of their
24 responsibility, so it had additional context as well.

25 \\\

1 **BY MS. MOSKOWITZ:**

2 **Q.** Yeah. And the original context here is that Google ends
3 up in court quite a bit and has to produce documents in those
4 cases; right?

5 **A.** That was one of the contexts, yes.

6 **Q.** Right. And what it says here "is to help avoid retention
7 of instant messages"; right?

8 **A.** Yes.

9 **Q.** Right. So it's deciding to make off the record the Chat
10 default setting to avoid or to help -- to help avoid
11 inadvertent retention of those documents; yes?

12 **A.** That's correct.

13 **Q.** The e-mail continues on to let employees know that they
14 can still preserve their Chat messages. It says (as read):

15 "You will still be able to save talk conversations
16 that are useful to you."

17 Do you see that?

18 **A.** Yes.

19 **Q.** But it warns Google employees again (as read):

20 "Please remember that on-the-record conversations
21 become part of your more or less permanent record and are
22 added to Google's long-term documents storehouse."

23 Right?

24 **A.** That's correct.

25 **Q.** So meaning on-the-record chats would become discoverable

1 in litigation down the road; right?

2 A. That's correct.

3 Q. Now, Google recognized its expected discovery obligations,
4 and its response was to automatically delete chats after
5 24 hours; right?

6 A. I wasn't an employee receiving at that time, so, you know,
7 I can't give full context on the thought process but the e-mail
8 lays it out, yes.

9 Q. That is what this decision was at this time -- as you read
10 this e-mail, the decision at this time was that Google
11 recognized its expected discovery obligations, and its response
12 was to automatically delete Chats after 24 hours; right?

13 A. That's correct.

14 Q. Those Chats may otherwise have been collected and produced
15 in litigation and regulatory matters; right?

16 A. Yes.

17 Q. Google maintained this policy that we're looking at here
18 even after you became CEO; right?

19 A. That's correct.

20 Q. And you maintained this policy while this case was going
21 through discovery; right?

22 A. That's correct.

23 Q. And as CEO, you knew that all Google employees, even those
24 under a legal hold, had the default setting on their Chats to
25 delete after 24 hours?

1 **A.** Yes. I rely on our legal and compliance teams to advise
2 me on our obligations here, so -- and I --

3 **Q.** But you were aware of it, though?

4 **A.** That's right, yeah.

5 **Q.** Okay. So as CEO --

6 **THE COURT:** I'm sorry, if I may.

7 Who specifically on the legal and compliance teams would
8 you typically rely on for that advice?

9 **THE WITNESS:** It would be typically Mr. Kent Walker,
10 our chief legal officer, Your Honor.

11 **THE COURT:** Okay. Good. Thank you.

12 Please, go ahead.

13 **BY MS. MOSKOWITZ:**

14 **Q.** So as CEO, you knew that all Google employees, even when
15 under a legal hold, had the default setting on their Chats to
16 delete after 24 hours?

17 **A.** That's correct.

18 **Q.** And as CEO, you never took -- personally took any steps to
19 change the policy in order to ensure that Google was meeting
20 its obligations to preserve documents for discovery?

21 **A.** There wasn't any recommendation for my consideration,
22 so...

23 **Q.** So no one recommended the change and you didn't recommend
24 any change yourself?

25 **A.** And I was aware that in case of litigation hold, our team

1 would follow-up and instruct employees to preserve all
2 documents, including e-mail documents and chats, related to
3 litigation holds.

4 **Q.** So as far as you knew, Google was preserving all of its
5 e-mail and instant message communications?

6 **A.** We would instruct employees to do so, and I would expect
7 our employees to uphold those instructions.

8 **Q.** Okay. But you didn't take any steps or worry about the
9 fact that the Chat setting was set to automatically delete
10 after 24 hours?

11 **A.** I supported all recommendations from our legal and
12 compliance teams.

13 **Q.** Now, there have been instances when you asked people that
14 you were chatting with to turn history off so that the chats
15 are deleted; right?

16 **A.** I've rarely done so. I can recall one occasion.

17 **Q.** Right. You have seen at least one occasion; right?

18 **A.** That's correct.

19 **Q.** Now, let's look at that. Please turn to your binder
20 Exhibit 2731, please.

21 **A.** (Witness examines document.)

22 **Q.** Are you there, sir?

23 **A.** Yes.

24 **Q.** Exhibit 2731 is a Google Chat conversation you
25 participated in on October 12, 2021; right?

1 **A.** That's correct.

2 **MS. MOSKOWITZ:** Your Honor, I move Exhibit 2731 into
3 evidence.

4 **MR. POMERANTZ:** No objection, Your Honor.

5 **THE COURT:** It is admitted.

6 (Trial Exhibit 2731 received in evidence.)

7 **MS. MOSKOWITZ:** All right. Let's put that on the
8 screen here.

9 **BY MS. MOSKOWITZ:**

10 **Q.** The first line, just to orient ourselves, is a chat from
11 you, and you ask for a link for your leader circle tomorrow.
12 Do you see that?

13 **A.** That's correct.

14 **Q.** You were asking your team for a link to a document that
15 the team was working on?

16 **A.** This was an external event. I was preparing to speak --

17 **Q.** Sir, sir, I understand what you're going to say and you'll
18 have a chance.

19 Listen to my question, please. My question was: You were
20 asking your team for a link to a document that your team was
21 working on; right?

22 **A.** Yes. For an external event, yes.

23 **Q.** I just want to try to get through this together. It's a
24 pretty simple question. I'm not asking what it was about yet.
25 I'll get there.

1 But for now my question was just: You were asking your
2 team for a link to a document that the team was working on;
3 yes?

4 **A.** Yes, that's correct.

5 **Q.** Now, this chat -- I heard you just say it, I'm not
6 disputing -- this isn't about Google Play or Android; right?
7 We can agree?

8 **A.** Yes. This had nothing to do with it.

9 **Q.** All right. I will stipulate that to you. Okay?

10 But this is a business communication. You were working on
11 something with your team for Google; right?

12 **A.** That's correct.

13 **Q.** Okay. Now, immediately asking the team for the business
14 document that you were working on, you wrote, quote (as read):

15 "Also, can we change the setting of this group to
16 history off?"

17 Do you see that?

18 **A.** Yes.

19 **Q.** And you understood that by asking your team to change the
20 setting of the group chat to history off, you were asking them
21 to ensure that the chat would be deleted in 24 hours; right?

22 **A.** For this chat, yes.

23 **Q.** Now, based on the timestamps, do you see the one that we
24 just highlighted as 4:53 and 28 seconds? Do you see that?

25 **A.** Yes.

1 Q. And 9 seconds later, 4:53:37, after you told the team to
2 change the setting to history off, there's a notification that
3 says "Deleted on" and a timestamp. Do you see that?

4 A. Yes.

5 Q. And right after that "Deleted on," it repeats exactly your
6 prior message; right?

7 A. That's correct.

8 Q. And take a moment to look. This is the only Chat message
9 that says "Deleted on." Do you see that?

10 A. That's right.

11 Q. Now, it says "deleted" and it gives you the time it was
12 deleted because you clicked a button to delete that one message
13 instructing your team to turn history off; right?

14 A. Not that I recall. This seems to be some glitch because
15 it repeats my original statement right after that. I don't
16 recall clicking a "delete" button.

17 Q. Right. You don't recall and you're speculating that this
18 is some sort of glitch in the system?

19 A. Because it repeats the same question from before too, so I
20 quite don't know what happened right there.

21 Q. Yeah. You just have no idea what happened there?

22 A. No.

23 Q. So you don't have any idea about whether if someone does,
24 in fact, click a button to delete, that that's precisely how it
25 shows up on the back end?

1 A. It may, but, you know, I don't recall deleting it. I was
2 just talking about a --

3 Q. Sir, I understand. You can explain what you were talking
4 about and why you wanted it to be deleted or why you wanted it
5 to be turned off. I'm just asking you a question.

6 Do you have any knowledge that when a user, like yourself,
7 clicks a button to delete it, that that's precisely how it
8 shows up on the back end when it gets produced?

9 A. But it won't reproduce the next line after that.

10 Q. Do you know that, sir, or are you guessing that?

11 A. Yeah, that's how the product works. I understand how the
12 product works.

13 Q. Do you?

14 A. Yes.

15 Q. Okay. Well, what about if it said "Updated on"? If it
16 said "Updated on," wouldn't it repeat exactly what you wrote
17 before with whatever you edited?

18 A. I haven't seen that particular behavior, no.

19 Q. You haven't seen that?

20 A. No.

21 Q. No. So if we've seen that here and a witness has said
22 that that is precisely what it would look like when it got
23 produced to us when someone pressed the button to delete, you
24 would have no basis to actually dispute that, would you?

25 A. No.

1 Q. You can put that away.

2 Back to 2013 when you began leading the Android and
3 Google Play business. Android was the most popular mobile
4 operating system in the world at that time?

5 A. Yes.

6 Q. And by 2013 Android had already captured a majority of the
7 global smartphone market; right?

8 A. I think it was the most popular operating system by then,
9 yes.

10 Q. And by the same time Google Play was also the most widely
11 used app store on Android?

12 A. That's my understanding, yes.

13 Q. You're familiar with the term "OEM"?

14 A. Yes.

15 Q. And by now we don't actually have to define that anymore.
16 I think everyone's heard that enough.

17 But just as a refresher, an OEM is a company that
18 manufactures a piece of hardware that runs an operating system;
19 is that fair?

20 A. That's correct.

21 Q. And, for example, there are OEMs that make and sell
22 personal computers that run the Windows operating system;
23 right?

24 A. That's correct.

25 Q. And there are various OEMs that manufacture smartphones

1 that run the Android operating system?

2 A. Correct.

3 Q. OEMs can preinstall apps on their smartphones that they
4 make; right?

5 A. Are you talking for Windows or for Android or for in
6 general?

7 Q. Well, sure, we can start in general.

8 A. Yes.

9 Q. OEMs can preinstall applications on their device that they
10 intend to sell.

11 Okay. And OEMs for smartphones can preinstall apps on the
12 smartphones they manufacture?

13 A. Yes, that's correct.

14 Q. And OEMs of personal computers can install apps on their
15 computers that they intend to sell?

16 A. That's correct.

17 Q. Now, for the apps that are preinstalled by OEMs -- and
18 I'll talk about phones for now -- there's nothing a user needs
19 to do to download that app; it's just there when the phone is
20 opened up for the first time; right?

21 A. That's correct, yeah.

22 Q. Having an app preinstalled is a good thing for a
23 developer; right?

24 A. Yes.

25 Q. And having an app store preinstalled is a good thing for a

1 store to reach users?

2 **A.** Yes.

3 **Q.** The default home screen on a phone is the screen that a
4 user sees when the phone is booted up; right?

5 **A.** That's correct.

6 **Q.** And in general, OEMs of smartphones can choose to
7 preinstall apps on the default home screen of the phones they
8 make?

9 **A.** Yes.

10 **Q.** In the early days of Android, Google created an ecosystem
11 on Android that was built around Google's own apps and
12 services; right?

13 **A.** Amongst many things, yes.

14 **Q.** And when you took over Android, there were some large
15 firms like Samsung, Amazon, Facebook that had the potential to
16 create alternative ecosystems within Android; right?

17 **A.** Yes.

18 **Q.** And their apps competed with Google Play; right?

19 **A.** Are you talking about their app stores or just their apps
20 in general?

21 **Q.** Their potential to create alternative ecosystems competed
22 with Google Play; right?

23 **A.** "Ecosystem" is a very broad word. I'm just trying to
24 understand your question. By "ecosystem," can you clarify what
25 you mean?

1 Q. Sure. Well, each of them had the potential to have an app
2 store; right?

3 A. That's correct, yeah.

4 Q. And those app stores would compete with Google Play?

5 A. Yes.

6 Q. Okay. Now, you met regularly with Android and Google Play
7 leadership teams at the time you became the head of the
8 business and thereafter?

9 A. Yes, that's correct.

10 Q. And it was common practice for a member of the meeting to
11 summarize and circulate notes after the meeting took place;
12 right?

13 A. Yes. Yes.

14 Q. If you could turn to Exhibit 2726, please, in your binder.

15 A. (Witness examines document.)

16 Q. Are you there?

17 A. Yes.

18 Q. All right. This is an e-mail from April 17th, 2013, on
19 behalf of Ryan Gibson. Do you see that?

20 A. Yes.

21 Q. And this is summarizing notes of an Android leadership
22 meeting that took place on April 16th, 2013?

23 A. Yes. It looks like it, yes.

24 MS. MOSKOWITZ: Your Honor, I move 2726 into evidence.

25 MR. POMERANTZ: No objection, Your Honor.

1 **THE COURT:** It is admitted.

2 (Trial Exhibit 2726 received in evidence.)

3 **BY MS. MOSKOWITZ:**

4 **Q.** All right. Let's take a look here.

5 You see notes April 16th, 2013, at the top there?

6 **A.** Yes.

7 **Q.** And he's sending it to the Android leadership listserv
8 that you were part of?

9 **A.** That's correct.

10 **Q.** All right. Let's look at the first paragraph, and it says
11 "Sundar." Do you see that?

12 **A.** Yes.

13 **Q.** And so here he starts summarizing a set of things that you
14 had communicated at the meeting?

15 **A.** His -- his take on what happened in the meeting, that's
16 correct.

17 **Q.** Well, right here it's his take on what you said at the
18 meeting; right?

19 **A.** He's paraphrasing me. Not exactly what I said but, yes.

20 **Q.** Understood. But he's summarizing the part of the meeting
21 where you were speaking?

22 **A.** That's correct. That's correct.

23 **Q.** Okay. And in the fourth paragraph down on the bottom you
24 say this is where he starts summarizing what Mr. Lockheimer,
25 Hiroshi Lockheimer, started saying?

1 **A.** The meetings are back and forth, so it doesn't exactly
2 flow this way. So he's using his judgment and paraphrasing and
3 summarizing; but with that, yes.

4 **Q.** So let's go back up to the second paragraph -- well,
5 withdrawn.

6 Let me just -- Mr. Gibson in good faith was attempting to
7 capture the meeting as he was hearing it and understanding it;
8 right?

9 **A.** Capture the discussion, a lively discussion, yes.

10 **Q.** He was taking notes and trying to summarize in good faith
11 what had occurred at that meeting?

12 **A.** That's correct.

13 **Q.** All right. Let's go to that second paragraph here. He
14 summarizes you as saying (as read):

15 "Android did a great thing from an open-source origin
16 getting 70 percent phone share."

17 Do you see that?

18 **A.** That's correct.

19 **Q.** And he says there was a discussion about partner
20 competitor positioning within the Android's ecosystem. Do you
21 see that?

22 **A.** Yes.

23 **Q.** And he refers to Samsung, Amazon, and Facebook as the
24 partner competitors?

25 **A.** That's correct.

1 Q. And to be clear, this is discussing competitors'
2 positioning within the Android ecosystem; right?

3 A. Not necessarily. I mean, we compete with them across
4 multiple, multiple areas.

5 Q. Okay. But right here it's talking about their positioning
6 within the Android ecosystem; right?

7 A. I don't see the word "within." It says "with." And this
8 is him paraphrasing. I thought of these people as competing
9 across the scale and scope of Google overall.

10 Q. Well, we just discussed that these three companies were
11 threatening to have competing app stores to Google Play; right?

12 A. Not that I was aware of, like I said.

13 Q. You weren't aware of that?

14 A. Not -- not from Facebook, as an example.

15 Q. Okay. So you had no idea that Facebook was threatening to
16 be an app distribution mechanism?

17 A. We -- we realized Facebook had the potential to drive
18 discovery of apps, but at least I wasn't aware of any specific
19 work from them to become an app store. At least not that I
20 recall.

21 Q. All right. So you just don't distinguish in your mind
22 becoming an actual store as opposed to a distribution platform
23 and discovery platform for apps?

24 A. That's right.

25 Q. Okay. But so if we're talking about alternative app

1 distribution, including but not limited to storage, you
2 understood Facebook was a potential competitor?

3 **A.** That's right, yeah.

4 **Q.** Okay. And they were a potential competitor to do that app
5 distribution within Android; right?

6 **A.** Facebook drives app installs both on Android and IOS, so
7 it's across everything they do, that's correct.

8 **Q.** Right. But with respect to what you, Google, were
9 thinking about -- well, withdrawn.

10 Does Samsung distribute apps on IOS?

11 **A.** No, they don't.

12 **Q.** Okay. So does Amazon distribute apps on IOS?

13 **A.** I don't think IOS allows other app stores. Android does,
14 so probably Amazon was only thinking about -- Amazon promotes
15 apps and drives app installs to IOS. They don't have a store.

16 **Q.** Sir, I just asked -- I'm asking about distribution of
17 apps, not advertisements or not pointing people. I'm just
18 talking --

19 **A.** I'm just trying to understand your question and answer
20 back.

21 **Q.** Yes.

22 **A.** There are nuances in these questions.

23 **Q.** You will have a chance. I'm asking --

24 **A.** This is my chance. I'm trying to answer your question.

25 **Q.** I want to ask it again because I don't think you are.

1 A. Please.

2 Q. Amazon, as an app distribution mechanism, cannot do that
3 on IOS? Yes or no.

4 A. I think they can.

5 Q. You think that Amazon can deliver apps to IOS devices?

6 A. Not deliver. In terms of discovery, yes, they can.

7 Q. Okay.

8 A. That's why I'm just trying to understand your question.

9 Q. You cannot go to the Amazon App Store --

10 THE COURT: Let's let the witness finish.

11 Go ahead.

12 MS. MOSKOWITZ: Sure.

13 BY MS. MOSKOWITZ:

14 Q. You cannot go to the Amazon --

15 THE COURT: Let's let the witness finish.

16 MS. MOSKOWITZ: Oh, I thought he did.

17 THE COURT: Go ahead.

18 BY MS. MOSKOWITZ:

19 Q. You said you think they can?

20 A. Amazon --

21 Q. You said you think they can; right?

22 THE COURT: Ms. Moskowitz, just let -- you can be
23 quiet for a moment and the witness will talk.

24 Go ahead. All right.

25 THE WITNESS: Amazon can promote an application to an

1 IOS user and, hence, drive discovery. So, you know,
2 distribution could be discovery, it could be subsequent
3 fulfillment. So it encompasses all of those things. So can
4 Amazon drive discovery to IOS users? Yes, they can.

5 **BY MS. MOSKOWITZ:**

6 **Q.** Okay. But Amazon cannot actually offer an app store on
7 IOS?

8 **A.** That's right, not an app store.

9 **Q.** Right. So it can put an advertisement on their website
10 and drive people to an install; is that what you're talking
11 about?

12 **A.** That's right, and that's the context in which Facebook
13 does it here too.

14 **Q.** Okay.

15 **A.** So it depends on what you're talking about.

16 **Q.** Is Samsung doing that?

17 **A.** No.

18 **Q.** Okay. So Samsung --

19 **A.** The three players here are doing different things, so I'm
20 trying to answer it in a nuanced way.

21 **Q.** Samsung is referenced here in the context of within the
22 Android's ecosystem; right?

23 **A.** That's correct.

24 **Q.** Okay. And Amazon, you're aware, was trying to get an
25 Amazon App Store onto Android devices; right?

1 A. I think at the time they had an app store, yes.

2 Q. And Facebook was trying to get an Android distribution
3 platform on Android; right?

4 A. They were an app discovery platform at that time. That's
5 what I was aware of.

6 Q. So you have no information whatsoever about whether
7 Facebook ever was investigating and trying to launch an app
8 distribution platform on Android?

9 A. Not something I was concerned about, yeah.

10 Q. Not that you were concerned. Were you aware, sir?

11 A. I can't recall for sure.

12 Q. Now, you understood that OEMs were in discussion --
13 Android OEMs were in discussion with Amazon, Samsung, and
14 Facebook to preinstall Samsung, Amazon, and Facebook apps onto
15 their devices; right?

16 A. Their applications, yes. Yeah.

17 Q. And that included their stores; right?

18 A. I wasn't aware of any conversations around OEMs discussing
19 with Facebook about Facebook's app store, but I was aware of
20 Amazon and Samsung, yes.

21 Q. So you understood that there was a potential for Samsung
22 and Amazon -- we'll set aside Facebook -- to be reaching
23 agreements with OEMs to preinstall app stores onto their
24 Android devices?

25 A. That's correct.

1 Q. Now, after this, the third paragraph says (as read):

2 "Should we revisit the rules now that we aren't an
3 upstart open-source operating system?"

4 Do you see that?

5 A. Yes, that's correct.

6 Q. And at the end of that paragraph it says that (as read):

7 "The nightmare scenario is we lose control of
8 Android. Can't take what we have here for granted."
9 Right?

10 A. (No audible response.)

11 Q. All right. So let's look at some of those rules Google's
12 put in place.

13 Google -- and you can take that down.

14 Google enters into an agreement with Android OEMs called
15 the Mobile Application Distribution Agreement or the MADA;
16 right?

17 A. That's correct.

18 Q. And pursuant to the MADA's that OEMs entered into with
19 Google, the OEMs must place Google Play on the default home
20 screen of their Android devices; right?

21 A. That's correct.

22 Q. And virtually all OEMs that manufacture Android
23 smartphones have entered into a MADA?

24 A. Yes, that's correct.

25 Q. And as a result, Google Play is preinstalled on the

1 default home screen of nearly all Android smartphones?

2 **A.** Yes. Typically not on an exclusive basis but, yes, it's
3 preload -- they're preloaded.

4 **Q.** As a result of the MADA -- please listen to my question.

5 As a result of the MADA, Google Play is preinstalled on
6 the default home screen of nearly all Android smartphones;
7 correct?

8 **A.** That's correct.

9 **Q.** Placement on a default home screen of a phone as opposed
10 to being on another screen tends to lead to more usage of those
11 apps; right?

12 **A.** Typically, yes. Yeah.

13 **Q.** And some Android OEMs have created their own app stores;
14 right?

15 **A.** That's correct.

16 **Q.** Samsung, for example, operates the Galaxy Store?

17 **A.** That's correct, and it's typically preinstalled on their
18 phones right next to Google Play.

19 **Q.** Sir, I just need you to answer my questions one by one.
20 Okay?

21 All I asked you was: Samsung, for example, operates the
22 Galaxy Store; correct?

23 **A.** Correct.

24 **Q.** Okay. And the MADA requires Samsung to put Google Play on
25 the default home screen even if the Galaxy Store is also on the

1 home screen?

2 **A.** That's correct.

3 **Q.** And it would not surprise you if some OEMs would prefer to
4 use only their own app store instead of also having to offer
5 Google Play; right?

6 **A.** Yeah, it wouldn't surprise me.

7 **Q.** It wouldn't surprise you if that some OEMs had a
8 preference to just install their own app store, not also
9 Google Play; right?

10 **A.** There are times. We are trying to run an Android
11 ecosystem for all users and OEMs have their own preferences, so
12 sometimes there could be disagreements, yes.

13 **Q.** And the disagreement that could sometime happen is that an
14 OEM wants their own store to be the only store on the phone?

15 **A.** This hasn't been a topic that they raised with me; right?
16 But, yes, it wouldn't surprise me they had concerns along those
17 directions.

18 **Q.** Okay. If Google did not require those OEMs to place
19 Google Play on the default home screen, some OEMs would place
20 it somewhere else even if they put it on at all; right?

21 **A.** They might. I think it would impact their sales competing
22 with Apple, and so I don't think practically they would.

23 **MS. MOSKOWITZ:** Your Honor, page 42 in the first
24 transcript in your binder, please, lines 13 to 17. Page 42.

25 **THE COURT:** 15 to 17?

1 **MS. MOSKOWITZ:** 13 to 17, Your Honor.

2 **THE COURT:** 13.

3 (Pause in proceedings.)

4 **THE COURT:** That's fine.

5 **MS. MOSKOWITZ:** Let's put that on the screen, please.

6 **BY MS. MOSKOWITZ:**

7 **Q.** Do you recall taking a deposition in this case?

8 **A.** Yes.

9 **Q.** And you were under oath?

10 **A.** Yes.

11 **Q.** And you told the truth?

12 **A.** Yes.

13 **Q.** Do you see here that you were asked the following question
14 and gave the following answer? (as read):

15 **"QUESTION:** And so in that event if Google did not require
16 those OEMs to place Google Play on the default home
17 screen, some OEMs would place it somewhere other than the
18 home screen; correct?

19 **"ANSWER:** I would assume so, yes."

20 Did I read that correctly?

21 **A.** That's correct.

22 **Q.** Now, because of the MADA, any OEM who wants to promote its
23 own app store by placing it on the default home screen must
24 also place Google Play on that same default home screen; right?

25 **A.** That's correct.

1 Q. If an OEM stopped preinstalling Google Play on the default
2 home screen, that OEM would not have any access to preinstall
3 any of the Google GMS apps; right?

4 A. Today, that's right, because this is part of the MADA
5 requirement. That's right.

6 Q. I just didn't hear that first word.

7 That's right. Okay. I saw it. Thank you.

8 All right. So if an OEM stopped placing Google Play on
9 the home screen, the default home screen, it would lose --
10 under the MADA, it would lose access to offering the GMS apps
11 and the core Android APIs; right?

12 A. That's correct. These are the placement requirements for
13 the MADA.

14 Q. Right. And so if they violate those placement
15 requirements, they lose the ability to preinstall any of those
16 Google apps and they lose access to the core APIs that Google
17 makes available?

18 A. That's correct.

19 Q. And those core Android APIs are a set of APIs on which a
20 lot of Android applications depend; right?

21 A. That's correct, and it provides a lot of value to OEMs as
22 well.

23 Q. A lot of Android applications that are made and offered
24 today depend -- they don't work without those APIs; right?

25 A. That's correct.

1 Q. So if an OEM decides not to preinstall Google Play on the
2 default home screen, a lot of Android applications will just
3 not work on that smartphone; right?

4 A. That's correct. The OEM can take open-source Android and
5 not license MADA and still pursue their own smartphone. It's
6 up to them there.

7 Q. Right. But not a single OEM has ever gone that route;
8 right?

9 A. Because they find tremendous value --

10 Q. Sir --

11 A. -- and they can compete better with iPhones by using
12 this, yes.

13 Q. Sir, I'm sure you have lots of reasons why they make that
14 choice. I'm just saying, not a single OEM has made that choice
15 to set aside the MADA; right? They all have entered into it;
16 right?

17 A. That's not correct. There are OEMs who have set aside
18 MADA and have shipped phones before.

19 Q. Currently today there's not a single OEM that is selling
20 an Android smartphone that has not signed a MADA; right?

21 A. Not today.

22 Q. Okay. So people have tried and failed before?

23 A. Because the market values, the consumers value what we
24 provide through the MADA application.

25 Q. OEMs can sometimes set certain apps or services to be the

1 default for certain functions on their smartphones; right?

2 **A.** That's correct.

3 **Q.** For example, OEMs can set a default app store for the
4 smartphones they sell?

5 **A.** That's correct.

6 **Q.** And similar to preinstallation, having an app set as a
7 default is a way to drive usage?

8 **A.** That's correct.

9 **Q.** And when an app is set as a default, users are more likely
10 to see and to try that app?

11 **A.** That's correct. To some extent, yes.

12 **Q.** It's correct that when an app is set as a default, users
13 are more likely to see and to try that application; right?

14 **A.** Not always.

15 **Q.** Okay.

16 **MS. MOSKOWITZ:** Your Honor, page 25, please, lines 14
17 to 19.

18 (Pause in proceedings.)

19 **THE COURT:** That's fine.

20 **BY MS. MOSKOWITZ:**

21 **Q.** You were asked the following question and gave the
22 following answer at your deposition (as read):

23 **"QUESTION:** When an app is set as a default, users are
24 more likely to see and to try that application; right?

25 **"ANSWER:** Yes, that's one of the values that an app

1 developer sees in the process. Yes, that's correct."

2 Did I read that correctly?

3 A. Yeah. That's how the developer sees it, but --

4 Q. Sir, did I read it correctly?

5 A. Yes.

6 Q. The value of defaults can be worth billions of dollars
7 depending on the app or service; right?

8 A. In some cases, yes.

9 Q. And, in fact, Google pays Apple to the tune of billions of
10 dollars to have Google Search to be the default search on IOS
11 services?

12 A. That's correct.

13 Q. That's billions of dollars every year; right?

14 A. That's correct.

15 Q. How much -- how many billions was it last year?

16 A. I don't recall the specific amount, but it was well over
17 \$10 billion is what I recall. And we generate a lot of revenue
18 back, but that's what I recall.

19 Q. It was well over 10, did you say?

20 A. That's correct.

21 Q. Isn't it closer to 20, sir?

22 A. I don't recall the exact number.

23 Q. Okay. But if you heard something like at least 18, that
24 wouldn't shock your conscience?

25 A. It wouldn't surprise me.

1 Q. Okay. And Google pays billions of dollars to Apple every
2 year because being set as the default is valuable?

3 A. That's correct.

4 Q. And Google also pays Google Search revenue share to
5 Android OEMs to make Google Search the default on their
6 devices?

7 A. That's correct.

8 Q. And you have an understanding as to the revenue share
9 percentages that Google pays Apple and Android?

10 A. In some cases, yes, and some cases at a very high level.
11 I don't know the specifics in some cases.

12 Q. Okay. You're aware that with respect to the revenue share
13 that Apple pays -- excuse me -- Google pays to Apple is
14 36 percent?

15 A. That's correct.

16 Q. And are you aware that Google pays 16 percent to Samsung?

17 A. I'm not exactly sure of the specific number there. In the
18 case of Samsung, sometimes we also pay the carrier and the OEM;
19 whereas, in the case of Apple, we just pay Apple because they
20 get both shares there.

21 Q. In terms of what your Samsung partner gets directly,
22 separate from any other parties, Samsung gets less than half of
23 what Apple gets in terms of revenue share percentage; right?

24 A. Yes. We provide Android to Samsung as well, so...

25 Q. Sir, I'm just going to ask it again.

1 In terms of the revenue share on Search that the largest
2 OEM partner that Android has, Samsung, gets is less than half
3 of what Google pays Apple for Search revenue?

4 **A.** I'm not aware of the specific rev share number for
5 Samsung, so I'm not able to exactly answer it. But it is
6 apples and oranges so that's why --

7 **Q.** Sir, okay, you will have a chance. I'm just asking for
8 numbers.

9 If Samsung's share is under -- is around 16 percent and
10 the revenue share to Apple is 36 percent, you would agree that
11 that's less than half to Samsung?

12 **A.** If those are the numbers, yes.

13 **Q.** Okay. But you just don't know?

14 **A.** I don't know the Samsung.

15 **Q.** Okay. You know the Apple one?

16 **A.** That's correct.

17 **Q.** I got it right?

18 **A.** That's correct.

19 **Q.** All right. You agree with the notion that the more steps
20 you add to a user flow, users become less likely to complete
21 that flow; right?

22 **A.** Typically, yes.

23 **Q.** And the term that is used to describe more work by the
24 user is "friction"; right?

25 **A.** Yes.

1 Q. And adding steps to a user flow is an example of friction;
2 right?

3 A. That's correct.

4 Q. The more steps a user needs to take, the more friction
5 there is; right?

6 A. Yes. Friction can have benefits but, yes.

7 Q. Well, separate from why you might think friction is a good
8 idea, the more steps a user needs to take, the more friction
9 there is; right?

10 A. That's correct, yeah.

11 Q. And the more friction there is, the less likely the user
12 completes that flow?

13 A. Typically, yes. Yeah.

14 Q. Now, the process of changing a default app or a default
15 service is an example of friction?

16 A. Can you repeat that question?

17 Q. Sure.

18 The act or the process of changing a default, like a
19 default app or a default service, that is an example of
20 friction?

21 A. Yes.

22 Q. One of the default settings on Android is that Google
23 disables direct downloading by default. You're aware of that?

24 A. That's correct.

25 Q. So someone has to change the default settings to even

1 initiate a direct downloading flow; right?

2 A. If you mean outside the Play Store, yes.

3 Q. Yes, I do.

4 A. Yeah. Yes.

5 Q. Okay. So you understand that one way to get apps is
6 through the Google Play Store; right?

7 A. That's correct.

8 Q. And another way to get an app is directly from a website?

9 A. That's correct.

10 Q. Okay. So that's a direct downloading flow?

11 A. Yes.

12 Q. Okay. Now, when someone wants to do that, before they can
13 even start, they have to go and change a default setting in
14 their phone?

15 A. That's correct.

16 Q. And that's the unknown sources setting?

17 A. That's correct.

18 Q. And you personally have tested the process of directly
19 downloading from a website onto an Android phone?

20 A. That's correct.

21 Q. So you would agree that the steps and the screens that
22 Google imposes that a user has to go through are an example of
23 friction; right?

24 A. Yes.

25 Q. And because of the frictions in that direct downloading

1 process, it's easier for Android users to download apps from
2 Google Play than directly from developers?

3 **A.** Sorry. Can you repeat the question.

4 **Q.** Sure.

5 So because of the frictions in that direct downloading
6 flow or process, it is easier for an Android user to download
7 an app from Google Play than it is from downloading directly
8 from a developer website; right?

9 **A.** Well, the initial time; but subsequent, once you're given
10 the permission, the flow is the same.

11 **Q.** Okay. Well, that's a new change, isn't it, sir?

12 **A.** Actually, I'm not aware of that.

13 **Q.** Right. So you don't know that up until quite recently,
14 the direct downloading flow required someone to do that every
15 time they wanted to update the app?

16 **A.** I'm not sure of the specifics of the change, so I don't
17 know that.

18 **Q.** Okay. We should talk to some other engineers and other
19 folks about that?

20 **A.** There are executives, there are senior vice presidents who
21 run Android, Mr. Hiroshi Lockheimer and Mr. Sameer Samat.

22 **Q.** Okay. They'll know better.

23 But you know that once a user disables the unknown sources
24 setting, the user has to click through a series of warnings and
25 screens that Google imposes; right?

1 A. As part of the initial setup, yes.

2 Q. And I just want to make sure. When you say initial step,
3 you mean when they want to open the app after that, they don't
4 have to go through it again?

5 A. No. I'm saying when you -- for the first time you're
6 doing this, yes, you have to turn on unknown sources settings
7 and go through the set of steps there, yes.

8 Q. Okay. And then what do you mean when you say they don't
9 have to do that again?

10 A. If you install an alternate app store and you've gone
11 through this process, after the first application, you can
12 continue doing that without these additional steps.

13 Q. Okay. And do you have any understanding as to whether
14 that's always been the case?

15 A. I'm not fully sure.

16 Q. Okay. Now, Google claims that these warning screens are
17 intended to protect users from downloading malicious apps;
18 fair?

19 A. That's correct.

20 Q. But you understand and agree that some websites, such as
21 those from reputable developers, actually present very low
22 security risks; right?

23 A. Yes, but --

24 Q. Sir --

25 A. -- those websites can be spoofed with that criteria.

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1 Users have no way of knowing that it's the correct website.

2 Q. Some websites, such as those from reputable developers,
3 actually present very low security risks; true?

4 A. That's correct.

5 Q. And Google's unknown sources flow does not distinguish
6 between those trusted developers and every other website;
7 right?

8 A. That's correct.

9 Q. So a user going to amazonappstore.com is treated exactly
10 the same as illstealyourinfo.com?

11 A. That's right. We don't distinguish between the URLs.

12 Q. Okay. I made those websites up.

13 Okay. Let's move to a different topic.

14 The Chrome Web Store, you're familiar with that?

15 A. Yes.

16 Q. The Chrome Web Store is a store within the Chrome browser
17 on PCs?

18 A. That's correct.

19 Q. And it distributes browser extensions and web apps?

20 A. The store is no longer available. It was at one point.
21 If that's what you're asking, yes.

22 Q. Sure. So when it was available --

23 A. That's right.

24 Q. -- it distributed web extensions -- browser extensions --
25 excuse me -- and web apps?

1 A. That's correct.

2 Q. Okay. I'm probably going to get this wrong, but a browser
3 extension is a piece of software that a user can install to,
4 like, customize its browser experience; is that fair?

5 A. Pretty close. It can add functionality to a website.

6 Q. Okay. And a web app is an app that runs on web pages that
7 are accessed through the Internet browser?

8 A. That's correct.

9 Q. Okay. You ran the Chrome business before you became CEO?

10 A. That's correct.

11 Q. And you oversaw the launch of that Chrome Web Store during
12 the time you ran the Chrome business; right?

13 A. That's correct.

14 Q. For a developer who had developed an extension or a web
15 app, they could choose to offer that through the Chrome Web
16 Store or they could go through a PC app store or directly to
17 users; right?

18 A. It can just -- it's normally typically a direct website.
19 That's what they would do.

20 Q. But they could also use a PC app store?

21 A. Yes. I'm not sure there were PC app stores at the time
22 the Chrome Web Store existed. So I think all it is, is either
23 you could just go to netflix.com or it could be an extension in
24 the Chrome Web Store.

25 MS. MOSKOWITZ: Page 19, Your Honor, line 25, to

1 page 20, line 6, please.

2 (Pause in proceedings.)

3 **THE COURT:** That's fine.

4 **BY MS. MOSKOWITZ:**

5 **Q.** You were asked the following question and gave the
6 following answer at your deposition (as read):

7 **"QUESTION:** So for a developer who has developed an
8 extension or an app to offer to consumers or users of --
9 off the web, they could choose to offer that through the
10 Chrome Web Store or they could offer that -- choose to
11 offer that through a PC app store?

12 **"ANSWER:** That's right."

13 Did I read that correctly?

14 **A.** That's correct.

15 **Q.** So in that respect, in that instance, PC app stores would
16 be considered by Google to be a competitor of the Chrome Web
17 Store; right?

18 **A.** That's correct. Now I recall there were no PC app stores
19 at that time. That's why I'm clarifying.

20 **Q.** But I read it correctly?

21 **A.** That's right, yeah.

22 **Q.** All right. And so for PC app stores, in that respect,
23 they would be considered by Google to be a competitor of the
24 Chrome Web Store; right?

25 **A.** Yes. Though they didn't exist at that time, yes.

1 Q. If they had existed, then they would have been a
2 competitor?

3 A. If they had existed, yes, but that's not our thinking at
4 that time because there was no PC app store, yeah.

5 Q. So you just forgot about that at your deposition?

6 A. There were two parts to the question. I didn't realize
7 there were no PC app stores.

8 Q. Okay. Well, let's look at another clip.

9 MS. MOSKOWITZ: Then 19, Your Honor, lines 14 to 18.

10 THE COURT: Yes.

11 BY MS. MOSKOWITZ:

12 Q. You were asked the following question and gave the
13 following answer at your deposition (as read):

14 "QUESTION: And during that time, when both PC app stores
15 were in existence and the Chrome Web Store, would the PC
16 app stores be considered by Google to be a competitor of
17 the Chrome Web Store?

18 "ANSWER: In certain cases, yes."

19 Did I read that correctly?

20 A. Yes. And I agree with it, yes.

21 Q. I read it correctly?

22 A. Yes.

23 Q. Thank you.

24 That same developer, we just established, could also
25 choose to offer its app or extension to be directly downloaded

1 from that developer's website; right?

2 **A.** There was no downloading of a web application. You would
3 just go do the site and just use it.

4 **Q.** Okay. So they could get it from the website?

5 **A.** Yeah. The website is the application, yeah.

6 **Q.** All right. But you disagree that it was directly
7 downloaded from the website?

8 **A.** You wouldn't go to netflix.com and download Netflix. You
9 would just use it; right? So I'm trying to clarify. This is
10 apples and oranges; right? These are --

11 **MS. MOSKOWITZ:** Your Honor, lines -- page 20 --

12 **THE COURT:** Go ahead. Finish your answer.

13 **MS. MOSKOWITZ:** Okay.

14 **THE COURT:** Then you can ask your question.

15 **THE WITNESS:** I'm just trying to give context that at
16 that time, this was back in, you know, well over a decade ago,
17 you could go to a website or in the Chrome Web Store we were
18 trying to bundle a website and some additional functionality to
19 offer as a web application, but a user wouldn't go to a website
20 and download an application. You just went to the website and
21 used it. That's all I'm trying to clarify.

22 **MS. MOSKOWITZ:** Page 20, Your Honor, lines 7 to 10.

23 (Pause in proceedings.)

24 **THE COURT:** Okay.

25 \\\

1 **BY MS. MOSKOWITZ:**

2 **Q.** You were asked the following question and gave the
3 following answer at your deposition (as read):

4 **"QUESTION:** And that same developer could also choose to
5 offer it directly to be directly downloaded from that
6 developers website, for example?

7 **"ANSWER:** That's correct."

8 Did I read that correctly?

9 **A.** That's right.

10 **Q.** The Chrome Web Store enabled developers to sell digital
11 goods within their Chrome web apps at some point; right?

12 **A.** Yes.

13 **Q.** And in 2011, in fact, you made an announcement at Google's
14 IO Conference that the Chrome Web Store would begin offering
15 in-app payments; right?

16 **A.** That's correct.

17 **Q.** And you announced that Google would be charging a
18 5 percent fee for using in-app payments through the Chrome Web
19 Store; right?

20 **A.** That's correct.

21 **Q.** All right. We're going to put up a video on your monitor.
22 It might be familiar to you. And I've marked it as
23 Exhibit 2720, which is the video where you and other Google
24 employees presented at that IO Conference in 2011.

25 **MS. MOSKOWITZ:** And before I publish it, Your Honor,

1 I'll move it into evidence.

2 **MR. POMERANTZ:** No objection, Your Honor.

3 **THE COURT:** It's admitted.

4 (Trial Exhibit 2720 received in evidence.)

5 **MS. MOSKOWITZ:** Thank you.

6 **BY MS. MOSKOWITZ:**

7 **Q.** So I'm going to play for you two separate clips, and I'll
8 ask you a few questions in between.

9 So the first clip I'm going to play from the minute marked
10 23:21 to 24:21.

11 (Video was played but not reported.)

12 **BY MS. MOSKOWITZ:**

13 **Q.** All right. So that was the first clip. And that was one
14 of your colleagues announcing this at the 2011 conference?

15 **A.** That's correct.

16 **Q.** Now, this employee was reporting to the crowd that online
17 applications and social games were starting to pay to the tune
18 of 30 percent for payment fees; right?

19 **A.** That's correct.

20 **Q.** And Google Play at this time was charging 30 percent?

21 **A.** That's correct.

22 **Q.** And he was saying that 5 percent compared to 30 percent
23 was a great thing for developers; right?

24 **A.** That's right. That's what he was saying, yes.

25 **Q.** And the crowd was pretty enthusiastic about that?

1 A. Yeah. They always are, yeah.

2 Q. Okay. So let's play the second clip, and that's where you
3 come in. That's from 24:21 to 24:49.

4 (Video was played but not reported.)

5 BY MS. MOSKOWITZ:

6 Q. That was you, sir?

7 A. Yes.

8 Q. Okay. And you told the audience that you were excited
9 about the functionality that was being added to the Chrome Web
10 Store?

11 A. The payments functionality, yes.

12 Q. And specifically with respect to the payments
13 functionality, you said (as read):

14 "The ability to have purchases made and processed
15 within the app instead of forcing users to leave the app
16 to make a payment was a game changer."

17 A. That's right. For the web, yes.

18 Q. Well, in general, having to leave an app to make a
19 purchase breaks the experience for the user; right?

20 A. Typically, yes.

21 Q. And that's an example of friction that we've discussed?

22 A. That's correct.

23 Q. And you were also agreeing here that the 5 percent fee for
24 those in-app purchases would be good for developers; right?

25 A. That's correct.

1 Q. Now, there was some discussion within Google at the time
2 with respect to the 5 percent fee as to how that compared to
3 the Google Play 30 percent fee and whether that was a concern.
4 Do you remember that?

5 A. At a very high level. That was a long time ago.

6 Q. Okay. Let's look at Exhibit 2724 in your binder please.
7 2724, sir. Do you have it?

8 A. I can't find it. Sorry. Hold on.

9 Q. Out of order I guess.

10 A. (Witness examines document.) Yes, I found it. Thank you.

11 Q. Okay. That's an e-mail chain dated October 28, 2013. Do
12 you see that?

13 A. Yes.

14 MS. MOSKOWITZ: Your Honor, I move Exhibit 2724 into
15 evidence.

16 MR. POMERANTZ: No objection, Your Honor.

17 THE COURT: It is admitted.

18 (Trial Exhibit 2724 received in evidence.)

19 BY MS. MOSKOWITZ:

20 Q. All right. This e-mail chain is about Chrome, and it's
21 sent to, among others, Chrome Web Store leads. Do you see
22 that? That's a listserv?

23 A. Yes.

24 Q. Okay. And halfway down the first page there's an e-mail
25 from Joe Marini at 6:05 a.m. Do you see that? And it's also

1 on the screen if that helps.

2 A. Yes.

3 Q. Do you see where I am?

4 A. Yes.

5 Q. Okay. Mr. Marini was the head of developer relations for
6 the Chrome Web Store at this time?

7 A. I don't recall, but I'm fine with it.

8 Q. Okay. You just don't know one way or the other?

9 A. That's right, yeah.

10 Q. Okay. In the third paragraph of his e-mail he wrote (as
11 read):

12 "Awareness of the Chrome Web Store" --

13 That's CWS, Chrome Web Store?

14 A. That's correct.

15 Q. (as read):

16 "Awareness of the Chrome Web Store continues to be
17 relatively low."

18 Do you see that?

19 A. Yes.

20 Q. And so he wrote, he continued, that (as read):

21 "Unlike other app platforms, such as IOS and Android,
22 where their respective stores are the 'only game in town'
23 to get content for those platforms, it's entirely possible
24 to live a happy life as a Chrome user without ever having
25 to visit the Chrome Web Store."

1 Right?

2 A. That's correct, yeah.

3 Q. So he wrote (as read):

4 "As a result" -- "As a result of the Chrome Web Store
5 not being the only game in town, we" -- the Chrome Web
6 Store -- "have to work harder to draw users in."

7 Do you see that?

8 A. That's right.

9 Q. So what he's communicating here is that when a store isn't
10 the only option for users to get what they need, the store has
11 to do work to attract customers; right?

12 A. That's right. I saw it differently; but, yes, that's what
13 he's communicating.

14 Q. Well, let's take it out of this. Let's just talk in
15 general.

16 If a store is the only place to get what you need, those
17 users have no choice but to go to that store; is that fair?

18 A. That's correct, yeah.

19 Q. Now, when there are lots of stores, lots of options,
20 stores have to work to attract customers to their store?

21 A. That's correct.

22 Q. All right. And that's true for app stores as much as it
23 is in the real world, isn't it?

24 A. That's correct.

25 Q. App stores need to attract users and they also need to

1 attract developers?

2 **A.** That's correct.

3 **Q.** One way an app store can try to attract users and
4 developers is to offer competitive prices; right?

5 **A.** Yes.

6 **Q.** And another way an app store could try to attract users
7 and developers is to come up with some innovative features to
8 bring users in; right?

9 **A.** Yes.

10 **Q.** And another way an app store could try to attract users
11 and developers is to try to get exclusive content onto the
12 store such that they are the only place that that user can go
13 to get that content?

14 **A.** Yes.

15 **Q.** I do want to go even further back in time, back to 2009 in
16 fact.

17 So back in early 2009, Google's Chrome browser was still
18 in the early days; right?

19 **A.** Very early days, yes.

20 **Q.** Right. It had launched sort of at the end of 2008?

21 **A.** That's correct.

22 **Q.** And Chrome was trying to compete with Microsoft's
23 Internet Explorer, which was the dominant browser at that time;
24 right?

25 **A.** That's correct.

1 Q. Now I want to spend a little bit of time with you
2 exploring the situation back then and how it compares to the
3 current situation with Android and Google Play today.

4 You recall that Google vocally opposed Microsoft's conduct
5 with respect to Internet browsers -- Internet Explorer; right?

6 MR. POMERANTZ: Objection, Your Honor. 402 and 403.

7 THE COURT: This is what we talked about earlier?

8 MS. MOSKOWITZ: Yes.

9 THE COURT: Okay. Well, I'll tell you what. It's
10 been a rocking 75 minutes, let's take our morning break and
11 I'll see you back at -- let's stay on track so five to 11:00.
12 Okay?

13 All right.

14 THE CLERK: All rise.

15 (Proceedings were heard out of the presence of the jury:)

16 THE CLERK: Please be seated.

17 THE COURT: Okay. Mr. Pichai, you can step out.

18 THE WITNESS: Thank you.

19 THE COURT: All right. So we already talked about
20 this. I've overruled the objection.

21 MR. POMERANTZ: Well, Your Honor --

22 THE COURT: Is there something new?

23 MR. POMERANTZ: No, no, Your Honor. I think you had
24 said that she could ask a question to see if she could impeach
25 him, but I think -- I mean, she has given us 17 different

1 demonstratives that she intends to use to try to walk through
2 the different -- you know, the similarities or differences
3 between Microsoft and what happened in 2009 and Android and IOS
4 today.

5 **THE COURT:** Well, this is new. You didn't mention
6 that earlier.

7 **MR. POMERANTZ:** Well, I just got -- they didn't have
8 to give us their demonstratives until this morning, but there's
9 literally 17 different slides that she intends to walk through
10 with Mr. Pichai.

11 **THE COURT:** Where are the demonstratives?

12 **MS. MOSKOWITZ:** I can hand them up to you, Your Honor.
13 It's one demonstrative that builds --

14 **THE COURT:** I thought we were exchanging
15 demonstratives the day before.

16 **MR. POMERANTZ:** I think the agreement we had was if
17 it's a friendly witness -- I'm sorry.

18 We asked -- Mr. Kravis -- we asked if we could exchange
19 all demonstratives. They were only willing to do it to
20 friendly witnesses. So since Mr. Pichai is with Google, they
21 did not exchange.

22 **MS. MOSKOWITZ:** Yes, our agreement is we need not.

23 **THE COURT:** All right. Okay. This is a lot more than
24 you indicated earlier, Ms. Moskowitz.

25 **MS. MOSKOWITZ:** That's independent of the blog post,

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1 though, Your Honor. It's just comparing the situation that was
2 back then and the situation today.

3 **THE COURT:** Well, this is a little far afield. I
4 don't mind if you have some general questions about the power
5 of being preinstalled and the default and maybe one or two
6 references to other entities or companies that have done that.
7 This is way too much. Okay?

8 **MS. MOSKOWITZ:** Okay.

9 **THE COURT:** So don't do this.

10 **MS. MOSKOWITZ:** Okay.

11 **THE COURT:** All right.

12 **MS. MOSKOWITZ:** Thank you, Your Honor.

13 **THE COURT:** Let's just stick with what we talked about
14 this morning. Okay? All right.

15 **MS. MOSKOWITZ:** Thank you, Your Honor.

16 **THE CLERK:** Court's in recess.

17 (Recess taken at 10:44 a.m)

18 (Proceedings resumed at 10:59 a.m)

19 (Proceedings were heard in the presence of the jury:)

20 **MS. MOSKOWITZ:** May I proceed, Your Honor?

21 **THE COURT:** Yes.

22 **MS. MOSKOWITZ:** Thank you.

23 **BY MS. MOSKOWITZ:**

24 **Q.** Mr. Pichai, before the break, we were talking about 2009.

25 Do you remember that?

1 A. That's correct.

2 Q. And Microsoft required Windows OEMs to preinstall
3 Internet Explorer on Windows devices at that time?

4 A. That's right. Or they either shipped to build, but I
5 don't know the mechanics; but that's my understanding, yes.

6 Q. So your understanding was that OEMs were required to
7 preinstall Internet Explorer on Windows devices? It couldn't
8 be uninstalled? It was the default; right?

9 A. That's correct.

10 Q. Okay. And we talked earlier today about how Google
11 requires OEMs to preinstall the Play Store on the default home
12 screen; right?

13 A. That's correct.

14 Q. And OEMs cannot uninstall the Play Store; right?

15 A. If they have signed MADA, that's correct.

16 Q. And every OEM has signed a MADA for Android; right?

17 A. There are OEMs in the past who haven't signed MADA. Today
18 most manufacturers shipping the phones sign the MADA.

19 Q. Right. So today every OEM has signed a MADA?

20 A. I'm not sure whether it's every OEM, but most OEMs I
21 think.

22 Q. Okay. So all of those OEMs cannot uninstall the
23 Play Store?

24 A. That's correct.

25 Q. Right?

1 A. That's correct.

2 Q. And a user cannot uninstall the Play Store either?

3 A. That's correct.

4 Q. Now, as a result of the preinstallation setting as a
5 default of the Internet Explorer at that time,
6 Internet Explorer was the most widely used browser in the whole
7 world at that time?

8 A. In 2009, yes, that's correct.

9 Q. And today Google Play is the most widely used app store;
10 right?

11 A. In Android, yes.

12 Q. Yes. And, in fact, in the world?

13 A. I would think so, but I'm not aware of the numbers, yes.

14 Q. You thought it was unfair that Microsoft was basically
15 demanding that Internet Explorer be the browser of choice by
16 all Windows users; right?

17 A. We definitely had concerns at that time, yes.

18 Q. And Google requires OEMs to place the Play Store on the
19 default home screen; right?

20 A. That's correct.

21 Q. And you're also aware that there is an agreement called
22 the RSA 3.0 that prohibits an OEM who signed up for that
23 program from preinstalling competing app stores?

24 A. That's not my under -- I understand RSAs at a high level.
25 I wasn't directly involved in recent years. My understanding

1 is that there are different tiers; and in some cases, you know,
2 there are exclusivity arrangements.

3 Q. So you understand that at the premier tier of the RSA
4 agreements, for every device an OEM enrolls in that premier
5 tier, that OEM is prohibited from installing a competing app
6 store to Google Play; right?

7 A. At a high level, yes. Yeah.

8 Q. Okay. You agree that when users have choice, they may not
9 pick the dominant operating system's product; right?

10 A. When users have -- sorry. Could you repeat the question?

11 Q. Sure.

12 When users have choice, they may not pick the dominant
13 operating system's product; right?

14 A. That's correct.

15 Q. And on Android, we talked about this earlier, you would
16 agree that some OEMs, Android OEMs, would prefer to use their
17 own app store instead of having to offer Google Play; right?

18 A. That's correct.

19 Q. But they don't get that choice, right, if they sign the
20 MADA?

21 A. If they sign the MADA, I mean, they can load it side by
22 side, but that's right.

23 Q. And if they've signed the RSA and enrolled in the premier
24 tier, side by side it's not an option; right?

25 A. I'm not aware of the differences between the tiers, but at

1 a high level yes, I think that's correct.

2 Q. At some point the practices that you thought were unfair
3 with Microsoft changed; is that fair?

4 A. I'm not fully aware of all the specifics of what changed,
5 yeah.

6 Q. But at some point other web browsers, including Chrome,
7 had a chance to compete?

8 A. That's correct.

9 Q. And Chrome and other web browsers innovated and started
10 taking market share away from Microsoft; right?

11 A. That's correct.

12 Q. And today the most popular web browser on Windows is not
13 Internet Explorer but Google Chrome?

14 A. That's correct.

15 Q. And part of what you think helped Chrome win is a better
16 product; right?

17 A. It's a significantly better product, yes.

18 Q. But being a better product is not the only reason
19 Internet Explorer lost to Chrome; right?

20 A. I think that's the primary reason why Google Chrome, you
21 know, won the hearts and minds of users.

22 Q. Okay. Well, Google was eventually able to enter into
23 distribution deals with OEMs. That contributed to Chrome's
24 growth as well; right?

25 A. That's correct. We could do so in 2009 as well, but

1 that's correct.

2 Q. Well, Google was able to enter into deals to pay desktop
3 manufacturers, OEMs, and software companies to actually
4 preinstall Chrome on Windows computers?

5 A. That's correct.

6 Q. And Google also made deals not just for it to be
7 preinstalled but to make it a default?

8 A. That's correct.

9 Q. And you would agree that being preinstalled and being set
10 as the default in these deals helped Chrome gain market share
11 on Windows computers against Internet Explorer?

12 A. Yes.

13 Q. So Google was able to enter these deals and innovate its
14 product and beat its competitors on the merits; right?

15 A. That's correct.

16 Q. Google maintains profit and loss statements for individual
17 product areas; right?

18 A. Not always but, you know, in some cases the teams do have
19 a view, and we support them in that view.

20 Q. All right. Well, we'll dig into that.

21 Profit and loss is sometimes referred to as P&L?

22 A. That's correct.

23 Q. All right. So if I use "P&L," we are on the same page?

24 A. Yes.

25 Q. Okay. Now, Google maintains P&L statements for

1 Google Play itself; right?

2 **A.** When you say -- the Google Play team can take a P&L view
3 of its team and, you know, we support that view, but that's not
4 how at a Google level or how in our financial statements we
5 look at that, so...

6 **Q.** Google maintains P&L statements that include P&L for
7 Google Play; right?

8 **A.** When you say "maintains," not in our financial statement
9 but within the company we have views which do that.

10 **Q.** In the ordinary course of business, Google does keep P&L
11 for Google Play; right?

12 **A.** That's my understanding. I've seen it off and on, but
13 that's correct.

14 **Q.** And the P&L statements that Google does keep are
15 maintained in the ordinary course of business?

16 **A.** That's correct.

17 **Q.** And Google does rely on those P&L statements to evaluate
18 the performance of that product area in the ordinary course of
19 business?

20 **A.** That's correct.

21 **Q.** And the financial information that Google does put in
22 those Google Play P&L statements is sometimes presented to the
23 Alphabet board of directors; right?

24 **A.** That's correct.

25 **Q.** Let's turn your binder, please, to Exhibit 2728.

1 A. 272?

2 Q. 28. Sorry. 2728.

3 A. Thank you.

4 Q. Are you with me, sir?

5 A. Yes.

6 Q. This is a board deck for the Alphabet board of directors
7 dated July 15, 2020; right?

8 A. That's correct.

9 Q. All right.

10 MS. MOSKOWITZ: Your Honor, I move Exhibit 2728 into
11 evidence.

12 MR. POMERANTZ: No objection, Your Honor.

13 THE COURT: It is admitted.

14 (Trial Exhibit 2728 received in evidence.)

15 MS. MOSKOWITZ: All right. Let's put that on the
16 screen here.

17 BY MS. MOSKOWITZ:

18 Q. You presented, at least in part, at this board meeting?

19 A. The Google Play team was. I was part of the Alphabet
20 board receiving the presentation, but I also added comments to
21 it, yes.

22 Q. Right. So you presented in part at this meeting?

23 A. That's correct.

24 Q. And this slide deck was presented by Sameer Samat and
25 Hiroshi Lockheimer, who are senior leaders of Google Play and

1 Android?

2 A. That's correct.

3 Q. All right. Let's turn to page 2, please. And we'll keep
4 this whole thing on the screen if you can see it okay. If we
5 need to zoom in, we can.

6 Just looking here, the rightmost box on the slide reports
7 that in the first half of 2020 Google Play's operating profit
8 was \$4.4 billion. Do you see that?

9 A. Yes, I do.

10 Q. And right underneath that figure it reports a 65 percent
11 margin; right?

12 A. That's correct.

13 Q. Operating margin, generally speaking -- again, correct
14 me -- is a ratio that shows the amount of profit that's left
15 over after a company deducts its operating expenses from its
16 revenues?

17 A. That's -- that's correct. That's not exactly what
18 happened here, but that's correct.

19 Q. That's what it means generally?

20 A. In generally, yes.

21 Q. A 65 percent operating margin means that for every hundred
22 dollars a company earns in revenue, it spends 35 in operating
23 expenses and the 65 percent is operating profit that's left
24 over?

25 A. That's correct.

1 Q. So in the speaker notes down on the bottom it refers to
2 Google Play as one of the most -- well, the world -- the
3 world's largest commerce platforms. Do you see that?

4 A. That's correct.

5 Q. And it refers to Google Play as one of the most profitable
6 businesses at a greater than 60 percent margin. Do you see
7 that?

8 A. I see what's there, yes.

9 Q. And this metric was presented to the Alphabet board of
10 directors; right?

11 A. That's right.

12 Q. And according to this metric presented to the board of
13 directors, Google Play has maintained profit margins in that
14 greater than 60 percent range for many years; right?

15 A. That's correct. The board has context on how we view P&L
16 for this whole area, including Android; but, yes, that's what
17 this is.

18 Q. This is what was presented to the Alphabet board of
19 directors?

20 A. By the Play team, that's correct.

21 Q. All right.

22 MS. MOSKOWITZ: Pass the witness.

23 THE COURT: Okay.

24 \\\

25 \\\

CROSS-EXAMINATION

BY MR. POMERANTZ:

Q. Good morning, Mr. Pichai.

A. Good morning.

THE COURT: Is there a binder for me?

MR. POMERANTZ: I'm sorry?

THE COURT: Is there a binder for me?

MR. POMERANTZ: No, Your Honor.

THE COURT: Okay. Go ahead.

MR. POMERANTZ: I thought that would make you happy.

BY MR. POMERANTZ:

Q. So I just want to start with some questions about Google as a company.

What was Google's mission statement when you started at the company?

A. To organize information and make it universally accessible and useful.

Q. And has that mission changed in the past 20 years?

A. No. In fact, you know, I speak about it every year at our annual conference. If anything, it is more relevant today given the scale of information users are dealing with.

Q. And how does Android fit into that mission?

A. In a very fundamental way. One of the reasons we designed Android to be open and free for OEMs to use is so that people can really innovate across the world. We partner with

1 thousands of OEMs, which enable smartphones as affordable as
2 \$30, and it's really helped bring information and computing
3 accessible to hundreds of millions of people for the first
4 time, and so I think it directly helps to serve our mission.

5 **Q.** And what about Google Play? How does that fit into
6 Google's mission?

7 **A.** Google Play is an integral part of how we take the reach
8 of Android and all the work we do, and we help developers. We
9 make it easier for developers to develop apps on Google Play.
10 We give them what we call APIs, and they can reach all these
11 users. We give the distribution -- discovery and distribution
12 through Google Play.

13 And we have additional functionality, including security
14 and safety of the platform, including features like Family Link
15 which offers parental controls so that people can keep their
16 children safe and so on; and we enable for fulfillment and
17 transactions in the product. So it really helps developers be
18 successful with their business.

19 **Q.** Have you heard of an initiative called Android Go?

20 **A.** Yes.

21 **Q.** What is Android Go?

22 **A.** We constantly think about how we can make Android push the
23 boundaries of what it is, an affordable smartphone. We want to
24 lower the barriers so that more people can use a smartphone;
25 and to do that, we have to make Android even lighter weight so

1 that it could fit on phones with lower memory. And that's what
2 the Android Go initiative was. So I was directly involved in
3 it to try and lower the cost for OEMs to use Android.

4 **Q.** Have you personally been involved in trying to bring
5 Android and Play to places around the world to people who
6 cannot afford an iPhone?

7 **A.** All the time. I've traveled around the world meeting with
8 partners and developers and carriers to make sure we can make
9 Android more accessible and affordable.

10 **Q.** All right. Let's spend a little time about your -- on
11 your personal background.

12 Where did you grow up?

13 **A.** I grew up in Chennai in the south of India.

14 **Q.** And when you were growing up in India, what was your
15 exposure to phones and phone technology?

16 **A.** There was definitely no mobile phones at that time. There
17 were rotary dial phones. You know, we waited five years to get
18 access to one, and getting access to that rotary phone changed
19 our lives. People would come to our house to call their loved
20 ones.

21 I distinctly recall not -- you know, it would save me
22 four hours so that I didn't need to go to the hospital to get
23 the blood test results for my mother. So the phone call saved
24 that time, so it left a distinct impression on how technology
25 can improve people's lives.

1 Q. And did your interest in technology influence your
2 educational career?

3 A. Very much so. You know, I really wanted to be a part of
4 the work to do to make technology accessible to as many people
5 as I could.

6 Q. And where did you go to college?

7 A. In India. I went to the Indian Institute of Technology to
8 pursue a degree in material science and metallurgical
9 engineering.

10 Q. And then what brought you to America?

11 A. You know, I really wanted to -- my interest was in
12 semiconductors, which is the underlying technology which powers
13 computing, so I wanted to do research and advance it further.
14 So I had the opportunity to come to Stanford to do my Ph.D. in
15 material science.

16 Q. And could you remind the jury when you joined Google?

17 A. I joined Google in 2004, April of 2004.

18 Q. And what was your first job at Google?

19 A. I was a product manager for Google Toolbar.

20 Q. And what is Google Toolbar?

21 A. You know, at that time there were no search boxes in the
22 browser. So, you know, you had a product called
23 Google Toolbar. We gave Google Toolbar so that people could
24 install it and very conveniently search Google from the
25 browser.

1 Q. And then after you worked on the toolbar product, what was
2 the next product that you worked on at Google?

3 A. You know, we realized it was important -- we saw how
4 Toolbar made it more convenient for people to search Google and
5 use the web. So consistent with our mission, we were thinking
6 about how can we expand access even more, and we thought by
7 building a browser. The state of the browsers at the time
8 wasn't that great, so we had a vision to build a much faster
9 browser, a browser that was almost 20 times faster, much more
10 secular, and so I led the development of a product called
11 Google Chrome.

12 Q. And then around 2013 did you take over leadership of
13 Android?

14 A. That's correct.

15 Q. And then when you took over leadership of Android, were
16 you also -- did you also have responsibility for Play?

17 A. That's correct.

18 Q. And then you became CEO in 2015; correct?

19 A. That's correct.

20 Q. Now, at the end of counsel's questioning, they -- she
21 showed you some information about the financial performance of
22 Google Play. Do you recall that?

23 A. Yes.

24 Q. Let's just take this upfront. Would you say that Play has
25 been successful for Google?

1 **A.** Yes.

2 **Q.** And what does the success of Play tell you about the
3 success of developers who use Play?

4 **A.** The way we design Google Play is that we do well only when
5 developers do well. 97 percent of developers on Google Play
6 don't pay any money to Google, and they can -- they can make
7 their apps free. They can show ads. And so that's how
8 97 percent of Google Play developers work.

9 Of the remaining 3 percent, we only make money when the
10 developers make money. So of the remaining 3 percent,
11 99 percent pay 15 percent or less, and they always pay less
12 than 15 -- 15 percent for the first million dollars they make
13 with Google Play.

14 So we've really designed the platform to help support
15 developers reach as many users as possible and scale their
16 businesses. And we do well only when developers do well, and
17 it helps us support our investments in Android. We invest tens
18 of thousands of engineers to build Android, which we provide
19 for free of charge to OEMs around the world, and I think the
20 model works well to serve our mission.

21 **Q.** Let's talk about the cost of Android.

22 How much money at a high level does Google spend every
23 year to maintain and improve Android?

24 **A.** We invest billions of dollars in research costs, in
25 engineering and development costs, and go-to-market costs; and

1 we do this not just for phones but phones, tablets, watches,
2 TV, Android in your cars, and so it's a significant and
3 substantial investment.

4 **Q.** Do those investments in Android help Play succeed?

5 **A.** Yes. Play wouldn't be possible without those investments
6 in Android. So that's the foundation. The operating system is
7 the foundation on top of which we can help developers through
8 Google Play to make them successful.

9 **Q.** And do the investments to improve Android help Play to
10 compete against Apple in the Apple App Store?

11 **A.** Yes. Without it, it wouldn't be possible for Google Play
12 to compete with iPhone and IOS.

13 **Q.** And so if you think about the kinds of improvements that
14 Google has made to Android over the years, can you give
15 examples of how Android has helped Play to compete against
16 Apple and the Apple App Store?

17 **A.** We have made Android a much more robust platform and a
18 safe and secure platform, and we made it rich for developers,
19 the right applications. And that's what enables Google Play to
20 attract developers compared to Apple's iPhone and IOS. So
21 the fundamental investments.

22 Android was the first to design larger phones. It's the
23 first now to design foldable phones. All these innovations
24 really help attract -- Google Play attract developers to it.

25 **Q.** Now, Epic's counsel showed you a board presentation

1 relating to the profitability of Play. Do you recall that?

2 **A.** Yes.

3 **Q.** And I think it had a number of \$4.4 billion and a
4 65 percent margin. Do you recall that?

5 **A.** Yes.

6 **Q.** Are the costs of the investments in Android reflected in
7 those numbers?

8 **A.** No.

9 **Q.** So do the board of directors, the people who are listening
10 to this presentation, do they understand that the costs of
11 Android are not reflected in the numbers that are being
12 presented by the Play team?

13 **A.** Oh, very --

14 **MS. MOSKOWITZ:** Objection. We are getting into
15 leading soon.

16 **THE COURT:** Well, a little leading, but go ahead.

17 **THE WITNESS:** Very much so. The board has full
18 context because, you know, our CFO presents our financial view
19 of the businesses and so the board has full context. And they
20 understand that this is the view from a Google Play team
21 standpoint, and the reason they view it that way is because
22 that's the only cost the Google Play team can directly control.
23 And so this is a view from the Google Play team on how they see
24 their area.

25 \\\

1 **BY MR. POMERANTZ:**

2 **Q.** Why does Google ask a business unit like the Play team to
3 create a P&L that only reflects the costs and revenue that it
4 controls?

5 **A.** That way they can have a trend line. You know, they can
6 see how they are performing, and we can talk to them about it.
7 So it gives them a sense of the progress they are making, and
8 we find it valuable that way.

9 **Q.** All right. Let's switch now to Apple and the agreement
10 that counsel asked you about between Apple and Google relating
11 to revenue share. Remember that?

12 **A.** Yes.

13 **Q.** Does -- what business does that relate to?

14 **A.** It relates to the placement of Google Search as a default
15 in the Safari browser on IOS.

16 **Q.** And does that agreement have anything to do with Android?

17 **A.** None whatsoever.

18 **Q.** Does that agreement have anything to do with Play?

19 **A.** No.

20 **Q.** Does that agreement affect in any way Android's and Play's
21 ability and desire to compete against Apple in the Apple App
22 Store?

23 **A.** No. We compete fiercely with Apple, both the operating
24 system at a smartphone level and at an app store level, and I
25 think the competition has been very good both for consumers and

1 developers.

2 Q. Now, counsel asked you to compare the revenue share
3 percentage in the Apple agreement to the revenue share
4 percentage in the agreement that Google has with Samsung. Do
5 you recall that question?

6 A. Yes.

7 Q. And you said that that was like apples and oranges. Do
8 you recall that?

9 A. Yes.

10 Q. Why is it apples to oranges?

11 A. In the case of Apple, you know, we are competing for the
12 placement of default. That is the product and service we are
13 negotiating with.

14 In the case of Android, we are enabling our partners like
15 Samsung. Samsung makes phones entirely on Android operating
16 system. We give it to them free of charge, and Samsung gets to
17 go sell -- Samsung Mobile gets to go sell these phones and they
18 get to keep the profit from the phones. Right? So we're
19 providing Android for free of charge.

20 And in addition to Samsung, we give revenue share not just
21 to Samsung but we also give revenue share to the telecom
22 carriers in certain cases who take the products to market,
23 which is not true in Apple's case. So there are many, many
24 such differences.

25 Q. All right. Let's now go to competition between Google and

1 Apple, and let's start with phones themselves.

2 Do Android phones compete against the iPhone?

3 **A.** Yes, fiercely so.

4 **Q.** As CEO, what do you personally do to help Android compete
5 against the iPhone?

6 **A.** I'm constantly pushing the teams to innovate more, design
7 a better operating system, and, you know, compete for
8 functionality, try to do things first. Like I gave examples of
9 larger phones or foldable phones. So we are constantly pushing
10 the boundary of what's possible in the underlying operating
11 system trying to get to market first.

12 And then with the Google Play Store, we are trying to make
13 our platform attractive to developers, particularly globally,
14 and so that's one way.

15 And the third important way I think we compete with Apple
16 is we enable more affordable smartphones. Right? I think an
17 important way, and I think it's consistent with our mission, we
18 work hard to make smartphones as affordable as possible,
19 starting as low as \$30, which is very different from what Apple
20 does, and that way we add competition to the market.

21 **Q.** You mentioned the Play Store in that answer. Can Android
22 compete against Apple if it doesn't offer a compelling app
23 store?

24 **A.** Not at all. You know, people -- users are going to buy
25 phones and the essential part of how they view phones is the

1 functionality and applications they can use on their phones.
2 So it's often a point of comparison by consumers. It's
3 typically a point of comparison by product reviewers, by the
4 press who review our phones.

5 In fact, I remember once when we launched an Android
6 tablet and Google Play didn't have all the compelling apps
7 which Apple's iPad had, and it was highlighted as a
8 shortcoming and it affected our success in the market.

9 **Q.** All right. Let's turn to another topic.

10 Counsel asked you a bunch of questions right at the
11 outside about privilege and about Chats, and I want to
12 follow-up on those questions.

13 You said that you on occasion write the word "privilege"
14 on something when you intend it to be confidential but not
15 necessarily subject to the attorney-client privilege; correct?

16 **A.** That's correct.

17 **Q.** When you write "privilege" and mean confidential, do you
18 intend it not to be provided in a lawsuit if it's relevant?

19 **MS. MOSKOWITZ:** Objection.

20 **THE COURT:** Overruled.

21 **THE WITNESS:** Not at all.

22 **BY MR. POMERANTZ:**

23 **Q.** And have you ever tried to keep a document that you either
24 wrote or received hidden from a lawsuit?

25 **A.** No.

1 Q. All right. Could we pull up the 2008 e-mail from
2 Mr. Walker? It's Exhibit 8030, and I just want to direct your
3 attention to a portion of that.

4 If you can bring up the paragraph near the bottom. Here,
5 I'll tell you in a second.

6 The paragraph that begins "To help avoid." Yes. And if
7 you could highlight the sentence beginning with "If you've
8 received notice" about halfway down. And if you could go ahead
9 and highlight that.

10 This is a sentence in that e-mail that I don't think
11 counsel asked you about. Could you read that sentence out loud
12 to the jury?

13 A. (as read):

14 "If you have received notice that you are subject to
15 a litigation hold and you must chat regarding matters
16 covered by that hold, please make sure that those chats
17 are on the record."

18 Q. All right. And did you understand at the time that you
19 received this e-mail that you were supposed to make sure that
20 the chat was on the record if it was relevant to a litigation
21 hold?

22 A. Yes, I did.

23 Q. And to your knowledge, has that always been the
24 instruction at Google since 2008?

25 A. Yes.

1 Q. Now, when this lawsuit was filed in 2020, did you receive
2 instructions about what you should do to preserve relevant
3 Chats?

4 A. Yes, I did.

5 Q. And were you instructed not to use Chats on the issues
6 related to this lawsuit?

7 A. I was instructed to preserve documents be it e-mail, my
8 documents on my computer, or physical documents, and not to use
9 Chat regarding the litigation matter; and if I use Chat, to
10 turn history on.

11 Q. And did you follow those instructions?

12 A. Yes, I did.

13 Q. Have you asked for history to be turned off for the
14 purpose of withholding a chat from some lawsuit?

15 A. No.

16 Q. Now, Epic's lawyer showed you a particular chat relating
17 to something called a leader circle. Do you recall that?

18 A. Yes.

19 Q. Could we pull up Exhibit 2731?

20 All right. And you can see up at the very top, the very
21 first chat in the chain says (as read):

22 "Need the link for my leader circle tomorrow."

23 Do you see that?

24 A. Yes.

25 Q. And then the link was sent to you; correct?

1 A. That's correct.

2 Q. And if we turn to the third page of this, do you see -- is
3 this the document that was then sent to you by link?

4 A. Yes.

5 Q. What is the leader circle?

6 A. The leader circle is a gathering of our customers for the
7 Google Cloud platform, which is a different area, and these are
8 chief technology officers from Fortune Thousand companies for
9 whom we were holding a conference, and the top chief technology
10 officers and chief information officers is who we refer to as
11 leader circle, they are our most important partners.

12 Q. And so was this entire chat about a panel discussion you
13 were going to have with your Cloud customers?

14 A. Yeah. It was an external fireside chat that I was doing
15 for cloud customers, that's correct.

16 Q. Did this chat have anything to do with Android?

17 A. No.

18 Q. Did it have anything to do with Play?

19 A. No.

20 Q. Was it related in any way to any topic in this lawsuit?

21 A. Not at all.

22 Q. Now, why would you want history to be turned off when you
23 were discussing this speaking engagement?

24 A. I've rarely done this, so I don't recall the specifics;
25 but normally I would only do something like this if I were

1 about to comment on something of a personal nature about
2 someone in specific. And so I can only speculate because I
3 don't recall the specifics.

4 **Q.** All right. Let's -- you can take this down, and let's
5 change topics.

6 Counsel asked you about the service fee that Play or
7 others charge. Do you recall that?

8 **A.** Yes.

9 **Q.** And so the fee is called a service fee. Can you provide
10 the jury with some examples of the kinds of services that Play
11 provides in exchange for the service fee?

12 **A.** We built Google Play and we invest in it to make sure it's
13 reaching billions of consumers, and it provides a discovery
14 platform for consumers to find applications.

15 Then we provide APIs. We make it easier for application
16 developers to build their applications for Android.

17 We provide security and trust so that consumers have the
18 confidence and they interact to buy these application.

19 We support -- we give family controls so parents can help
20 their children be safe.

21 We help consumers so that when you transact and if you
22 later want to cancel, if you want to make changes, if you want
23 a refund, we support them through that.

24 So those are some of the examples. And we help developers
25 keep their applications updated on a continual basis.

1 Q. Now, Epic's counsel asked you some questions about how app
2 stores could compete against each other. Do you recall that?

3 A. Yes.

4 Q. And you said that one way they could compete is by
5 innovating on certain features; correct?

6 A. That's correct.

7 Q. So when you look at the way that Play Store competes
8 against the Apple App Store, are some of the things you just
9 mentioned and other's innovations by Play in its effort to
10 compete with the Apple App Store?

11 A. Absolutely.

12 Q. And could you just give examples of things that you recall
13 Play doing first in a way to try to innovate and compete
14 against the Apple App Store?

15 A. I mean, we have -- we've innovated on Family Link
16 controls, so the parental controls, to the extent we have
17 deeply invested in that.

18 We have allowed for -- we have done something called
19 Google Play Protect, which automatically scans and ensures that
20 there's no malware or anything in the applications that are
21 there in the Play Store so that users can have the confidence
22 when they download these apps.

23 These are some examples of the kind of innovations we have
24 done.

25 Q. Do you understand that there are literally millions of

1 apps offered in the Play Store that are available to users for
2 free?

3 **A.** Yes.

4 **Q.** And do most of those free apps pay any service fee?

5 **A.** Not at all.

6 **Q.** Why does Google offer all of these free apps in the store
7 without charging them any service fee at all?

8 **A.** A few reasons. First of all, you know, we need to make
9 sure users are buying an Android smartphone, and they want it
10 to work out of the box. Right? And they expect critical
11 functionality to be there.

12 This is part of the reason we do the mobile application
13 distribution arrangement, to make sure there's essential
14 out-of-the-box functionality, and people expect certain Google
15 apps to be there.

16 In addition -- sorry. Your question was in Play?

17 **Q.** Yes, in Play. In the millions of apps that are available
18 for free where the developer does not pay a service charge, why
19 does Google do that?

20 **A.** In these critical apps, if they are not there in the
21 Google Play Store, you know, they will be available on the
22 Apple App Store and people will just buy an iPhone instead.

23 So we're competing fiercely with Apple's iPhone and IOS.
24 So that's one -- one part of the reason. We want to make sure
25 things work for users.

1 There are some apps which are free apps. The developer is
2 providing it for free, and we think it's important we make them
3 available to our users as well.

4 **Q.** Well, let's -- I just want to make sure we're clear.

5 Does Apple offer free apps in the Apple App Store?

6 **A.** Yes.

7 **Q.** And does Apple charge a service fee to most of those app
8 developers?

9 **A.** No.

10 **Q.** So what would happen if Play charged a service fee to
11 those app developers and Apple did not?

12 **A.** They would just focus on writing their applications only
13 for Apple's app store.

14 **Q.** All right. Let's now talk for a few minutes about the
15 Chrome Web Store.

16 You recall getting some questions about the Chrome Web
17 Store?

18 **A.** Yes.

19 **Q.** Approximately when did Google launch the Chrome Web Store?

20 **A.** I think -- my recollection is it was 2011.

21 **Q.** And you were involved in that launch?

22 **A.** That's correct.

23 **Q.** What was the Chrome Web Store back when it launched in
24 2011?

25 **A.** All it did was at that time it took websites and allowed

1 developers to package some additional functionality, mostly
2 around payments maybe, and then put it in the Chrome Web Store.
3 The value proposition wasn't fully clear and the store didn't
4 succeed, but that's what it was trying to do.

5 **Q.** And you say the store didn't succeed? It's no longer
6 offering web apps?

7 **A.** Today -- all the web store does today is offer extensions,
8 but it no longer offers web apps.

9 **Q.** Okay. Now, you testified -- in fact, we saw a video where
10 you were talking about -- that was you in the video, by the
11 way?

12 **A.** A much younger version of me, yes.

13 **Q.** Okay. You testified that the Chrome Web Store charged a
14 5 percent fee; correct?

15 **A.** That's correct. That's correct.

16 **Q.** Why did the Chrome Web Store charge developers less than
17 what the Play Store charges?

18 **A.** I mean, it offers very limited value proposition compared
19 to all the things we do in Google Play and all -- at the time
20 it wasn't clear. People could just directly -- to give the
21 example of Netflix, you know, you could directly go to Netflix
22 on your browser and watch Netflix. Why would you go to the
23 Chrome Web Store and try to get Netflix? Because you can just
24 type in the URL on your browser and just use it. Right?

25 So the value given by the Chrome Web Store was much more

1 limited. It only made sense for certain kinds of use cases,
2 and I think we had to -- you know, we were designing a fee
3 proportional to the value we provided.

4 **Q.** So that's what -- the limited value of the Chrome Web
5 Store.

6 What is the value that the Play Store provides that the
7 Chrome Web Store didn't provide?

8 **A.** I mean, it is -- it is -- the people in mobile phones rely
9 on app stores to discover applications. So it's a primary
10 source of discovery. It has underlying API so that developers
11 can actually build applications. It provides the safety and
12 security for users so that they would trust those applications
13 and they would transact. It gives a consistent and a seamless
14 payment experience so that it allows for free flow of commerce
15 and in-app transactions in the app. Right? And so in this way
16 it offers substantially more value.

17 **Q.** All right. Can we look at one document that you were
18 shown about the Chrome Web Store? Exhibit 2724.

19 Could you put that on the screen? And could you pull up
20 the paragraph under number one below that begins with the word
21 "awareness"? Just the one paragraph with "awareness."

22 All right. So you were asked about the sentence in the
23 middle there that says (as read):

24 "... unlike other app platforms, such as IOS and
25 Android, where their respective stores are the only game

1 in town to get content for those platforms."

2 Do you see that?

3 A. Yes.

4 Q. And those weren't your words; right? That was written by
5 somebody else; correct?

6 A. That's correct.

7 Q. And you said in your answer that you saw it differently.
8 Do you recall that?

9 A. Yes.

10 Q. Could you tell the jury how you saw it?

11 A. If anything, even more, there was no other store in the
12 context of PCs at that time. The Chrome Web Store by this
13 definition was also the only game in town -- right? -- if you
14 define it that way.

15 I definitely didn't see it that way. I felt users had
16 choices to go and get applications. And in the case of the
17 Chrome Web Store, the store didn't have value. They would just
18 go and use the sites directly. Right?

19 And so this is such different scenarios right here.
20 You're talking about within a browser where the primary
21 mechanism was people going to websites directly, and that is so
22 different from a mobile app store. In fact, average consumers
23 know how to use a phone, use an app store, and install. That
24 is the primary way by which they get applications.

25 Q. All right. And, now, another comparison that counsel drew

1 was between mobile today and Microsoft 15 years ago. Do you
2 recall that?

3 **A.** Yes.

4 **Q.** Do you believe that Microsoft's preinstallation of
5 Internet Explorer on Windows back in 2009 is the same as what
6 Google is doing today when it's preinstalling the Play Store on
7 Android devices?

8 **A.** This is a very different time. You know, going back 15
9 years ago, at that time the personal computer market, Windows
10 had a 95 percent share. So everyone was using Windows. There
11 was no notion of app stores at the time. People just
12 wouldn't -- would not typically go and download something else,
13 particularly browsers. So you're talking about a very
14 different scenario in time.

15 Fast forward to today, people routinely, every user -- you
16 know, when I give a phone to my mother, she immediately starts,
17 without me telling her anything, installing and using
18 applications. So I think we're talking about very, very
19 different scenarios.

20 **Q.** All right. Let's talk a little bit about sideloading.
21 Okay?

22 When you were asked questions about sideloading, the word
23 "friction" came up. Do you recall that?

24 **A.** Yes.

25 **Q.** And you said at one point that friction can have benefits.

1 Do you recall that?

2 **A.** Yes.

3 **Q.** What were you talking about there?

4 **A.** You know, as all operating systems do, you know, you want
5 to make sure it users -- when users install an application, if
6 they install by chance the wrong application, it gives full
7 access to your operating system. All your data on the phone.
8 It can install malware on your phone, and it can -- you know,
9 today given our lives are digital, it can really compromise
10 your safety pretty significantly.

11 So we feel it's important. We're trying to strike a
12 balance. Apple's iPhone only allows the Apple App Store. In
13 Android we've always believed in giving choice. So we allow
14 users to sideload and install additional applications. But
15 it's important. We have to balance that by making sure the
16 users are aware they could be installing a potentially
17 malicious application.

18 So through the initial moments when they first do it, we
19 add steps just to make sure they are understanding it's their
20 choice. You know, and friction sometimes in a security context
21 is beneficial because you don't want to accidentally click on
22 something which could completely compromise your phone.

23 **Q.** Now, in response to one of counsel's questions about
24 sideloading and security, you used the term "spoof." What did
25 you mean by that?

1 **A.** You know, you could be in a social media website and
2 somebody could have a link there saying "Get something" and the
3 link looks like it's from a trusted developer. Let me use --
4 I'm going to use Netflix as an example. Right? And you think
5 you're getting something from Netflix, but they have spoofed,
6 they have changed the URL slightly in an almost imperceptible
7 way that you may not be going to Netflix. Right? And so
8 that's an example of spoofing, and it happens very, very
9 commonly.

10 **Q.** And so counsel gave you an example using Amazon. Do you
11 recall that?

12 **A.** Yes.

13 **Q.** And she was referring to it in the context of the unknown
14 sources setting in the Android phone. Do you recall that?

15 **A.** Yes.

16 **Q.** And so if you -- and she said: Amazon is not unknown. We
17 all know about Amazon; correct?

18 **A.** That's correct.

19 **Q.** How does spoofing relate to whether the user is actually
20 getting Amazon sideloaded onto their phone?

21 **A.** Now, again, they could have seen a link and they may be
22 landing on a website which is imitating Amazon but it's not
23 actually Amazon, and all we are doing at that point is just
24 asking the user to pause. We're just prompting the user just
25 to make sure they are aware and they're exercising the choice

1 they want to.

2 **Q.** Is security relevant to the competition between Android
3 and Apple?

4 **A.** Very much so. Because Apple doesn't allow sideloading,
5 they often compare and say Android is more insecure; and, you
6 know, so they constantly position Apple as being more secure.
7 And so those are the tradeoffs we have to do.

8 We care about giving choice, and so we have decided to
9 implement sideloading, but we are adding protections. It's
10 like a seat belt in a car. And so we are adding the
11 protections to make sure you can use it safely.

12 **Q.** All right. Just a couple last questions, Mr. Pichai.

13 So Epic -- is Epic Games right when it says in this
14 lawsuit that Google is trying to stifle choices that developers
15 like Epic have to bring their content to others?

16 **A.** No. It's not who we are as a company. Our mission is to
17 provide access to information and make it universally
18 acceptable and useful. This is why, you know, we made the
19 decision.

20 Android is unprecedented. There's never been a free and
21 open operating system which has reached over two and a half
22 billion users, and we do that by providing it free of charge
23 and making it possible to work with thousands of OEMs. And
24 this is not something we can do it alone. We work with
25 developers, hundreds -- thousands of developers who work with

1 us. We work hard to make sure apps are getting better, and we
2 want them to reach as many users as possible, including Epic,
3 and that's how we've always approached it.

4 Q. Thank you.

5 MR. POMERANTZ: No further questions, Your Honor.

6 THE COURT: All right. Brief recross.

7 MS. MOSKOWITZ: May I proceed?

8 TECH PERSONNEL: Ms. Clark, would you switch it over
9 to us?

10 MS. MOSKOWITZ: Thank you.

11 **REDIRECT EXAMINATION**

12 BY MS. MOSKOWITZ:

13 Q. Mr. Pichai, you were asked a question about the various
14 services that Google Play provides. Do you remember that?

15 A. Yes.

16 Q. And you were asked about how Google Play has competed
17 against Apple for those services; is that right?

18 A. That's correct.

19 Q. All of the services you listed are also areas that
20 alternative Android stores could compete on; right?

21 A. Yes.

22 Q. Amazon's app store could make a better parental control,
23 for example, than Google Play?

24 A. Yes.

25 Q. And you mentioned that the Chrome store was facing a

1 different situation because Netflix -- everyone knows Netflix.

2 You can just go get Netflix on the web; right?

3 **A.** That's correct.

4 **Q.** Well, Netflix -- Android users also know Netflix; right?

5 **A.** That's correct.

6 **Q.** But users have to go to the Google Play Store on Android
7 to get Netflix; right?

8 **A.** No. I mean, all Samsung phones ship at the Samsung Galaxy
9 App Store. By default, they can just open the Samsung Galaxy
10 App Store and go get Netflix.

11 **Q.** Right. But they have to go to a store to get Netflix;
12 right?

13 **A.** Yes, but not the Google Play Store.

14 **Q.** Okay. Well, on every non-Samsung, they have to go to the
15 Google Play Store; right?

16 **A.** It depends. The OEM may have chosen to include an Amazon
17 App Store or something else. It depends on what's on the
18 phone.

19 **Q.** Okay. Are you aware of how many OEMs have decided to
20 preinstall the Amazon App Store on their devices?

21 **A.** I don't know specifically about Amazon App Store, but I've
22 seen phones with Amazon App Store preinstalled.

23 **Q.** You've seen a phone with Amazon App Store preinstalled?

24 **A.** Over times I've seen phones. You know, Samsung is the
25 most popular smartphone manufacturer, and every -- I use

1 Samsung phones all the time. They have Samsung Galaxy App
2 Store right on the home screen, and you can go get Netflix from
3 there.

4 **Q.** All right. You agree with me a user on an Android phone
5 cannot just go to the Netflix website and get the Netflix app
6 for their Android phone; right?

7 **A.** They can. They can sideload. So they can -- if they
8 choose, they can go do that.

9 **Q.** Do you think Netflix offers that?

10 **A.** I'm not sure whether Netflix offers that. They offer it
11 both through Google Play Store and Samsung Galaxy Store.

12 **Q.** Right. Sticking with Netflix, do you believe Netflix
13 offers the Netflix Android app for sideloading by users on
14 Android?

15 **A.** I don't recall them doing so.

16 **Q.** And if they were to do so, they would have to go through
17 the multistep user flow, including unknown sources we discussed
18 earlier?

19 **A.** If that is the first time a user is interacting with that.
20 They may have done it for some other app before; and then if
21 they were doing Netflix, they don't need to go through the
22 unknown sources.

23 **Q.** They have to go through a number of steps; right?

24 **A.** It depends. If you've already turned on unknown sources,
25 you just have to go through that additional step there.

1 Q. Okay. So you think it's just one step for Netflix?

2 A. I'm not saying it's one step, but I'm not sure of all the
3 details here.

4 Q. Okay. So you have no idea how many steps a user has to go
5 through to get Netflix if it were even available for sideload
6 on Android?

7 A. It would depend on whether that's the first time they are
8 sideloading or they have done other sideloading before.

9 Q. Either way, sir, do you have a clue as to how many steps
10 are involved? That's what I'm just trying to understand.

11 A. I know it involves a few steps. I'm not exactly sure of
12 the specific number of steps.

13 Q. And I think we can agree, I think you said it, everyone
14 knows Netflix; right?

15 A. That's correct.

16 Q. Netflix.com I think was even what it was called for a
17 while?

18 A. That's correct.

19 Q. All right. And so you don't reduce the number of steps,
20 however many there may be, when a user wants to go download
21 Netflix from netflix.com; right?

22 A. Because if it's spoofed, we may not always know that's
23 happening. So we just give a standard set of warnings and make
24 sure the user is thinking through.

25 Q. All right. So the answer is no, even for Netflix, if a

1 user goes to netflix.com, there are the same number of steps
2 that if they went to any other website to get an app?

3 **A.** That's correct. That's correct.

4 **Q.** Okay. And people today on mobile phones have been trained
5 that they have to go to a store to get their app; isn't that
6 right?

7 **A.** Typically that's how most people get their applications,
8 yeah.

9 **Q.** And would you agree that it is not typical practice for
10 Android users to go sideload an alternative Android app store?

11 **A.** Yeah, I wouldn't say it's typical practice, that's
12 correct.

13 **Q.** And on PCs users can just go directly to websites. That's
14 what they do all the time; right?

15 **A.** That's correct.

16 **Q.** And they get their apps that way; right?

17 **A.** That's correct.

18 **Q.** And PCs have the same potential spoofing issues that you
19 mentioned; right?

20 **A.** Yeah. Which is why if you download something, you know,
21 PCs would show up and warn before you're installing something
22 on your computer; or in the Mac, before you actually install an
23 application, you know, you would give all the warnings.

24 The browser is different because applications in the
25 browser don't typically have access. They're written on your

1 operating system unlike in a mobile phone when you're
2 installing that application.

3 Q. All right. I want to install an app on my PC. Install an
4 app. I'm not just going to the web.

5 A. That's correct.

6 Q. I want to install an app. I can go to a website,
7 developer's website, and download that app on a PC; right?

8 A. That's right.

9 Q. All right. And you say they pop up a warning?

10 A. That's right. It depends on -- there are a few steps. If
11 you're on a Mac, you go through a few steps, yes.

12 Q. All right. Well, let's just ignore Mac for a second.

13 I'm on a PC. Do you have any idea how many steps I have
14 to go through to get that app on my device?

15 A. Recently I haven't been using a PC, but in the past, you
16 know --

17 Q. Do you know one way or the other? I'm just wondering.

18 A. Yeah.

19 Q. If you don't know, that's fine.

20 A. Yes. A few steps, yeah.

21 Q. A few? You think it's a few?

22 A. It's typically a couple steps. You know, you download and
23 you say yes, but that's one of the reasons that Mac has a
24 security advantage because they had more friction.

25 Q. Sir, I appreciate that. I'm just trying to get this done.

1 Do you know how many steps there are on a PC to download
2 an app directly from a developer's website? Yes or no.

3 A. I think so, yes.

4 Q. Okay. And do you think it is fewer or more than on an
5 Android device to do that same action?

6 A. I'm not fully sure. I think it could be fewer.

7 Q. Fewer on PC?

8 A. That's correct.

9 Q. You talked about competition with Apple a bit?

10 A. Yes.

11 Q. And I think you said that you think that the app stores
12 are competing at the app store level, Apple and Google; is that
13 what you said?

14 A. Yes. We compete both at the operating system, phone, and
15 the app store level, yes.

16 Q. You agree, though, that Google Play is not available for
17 IOS devices; right?

18 A. That's correct.

19 Q. And Apple App Store is not available for Android devices?

20 A. That's correct.

21 Q. Even through sideloading?

22 A. That's correct.

23 Q. And you talked about how Google Play only makes money when
24 Google Play developers make money; right?

25 A. That's correct.

1 Q. But under Google's deal with Apple, Google makes money
2 when users choose Android, but it also makes quite a bit of
3 money when users choose the IOS ecosystem; right?

4 A. We as a company have many different products and services.
5 Android doesn't make any money when people buy, you know,
6 Android or Google Play.

7 We have Google Search, which works both on iPhones --

8 Q. Right.

9 A. -- and on Android. And so this is a separate --

10 Q. Right.

11 A. Thank you.

12 Q. But Google as a company makes billions and billions and
13 billions of dollars every year even when users choose IOS
14 instead of Android?

15 A. That's correct.

16 Q. And you mentioned -- I think you were asked about the
17 revenue share that I had asked you about. Your counsel asked
18 you about it again. Do you remember that?

19 A. That's correct.

20 Q. I think I have some numbers for 2021. Let's see if you
21 know what I'm talking about.

22 Do you have an understanding that for Search revenue
23 share, in 2021 it was over a total of 26 and change billion
24 dollars that was paid?

25 A. At a Google level?

1 Q. At a -- to all of its Search revenue share partners?

2 A. That's about right. I can't be exactly sure, but it
3 sounds about right.

4 Q. Okay. And do you understand what the fraction of that was
5 for Apple?

6 A. I'm not fully sure, though the majority of it is.

7 Q. The majority of it's Apple; right?

8 A. Correct.

9 Q. And does it sound right that Samsung was only 2 billion of
10 that?

11 A. I'm not sure of the exact numbers for Samsung.

12 Q. But the majority of that overall number is Apple and the
13 remainder is divided up among OEMs and carriers?

14 A. That's correct.

15 Q. All right. Android OEMs and carriers?

16 A. That's correct.

17 Q. You were asked about our privilege-and-chat discussion.
18 Do you remember that?

19 A. Yes.

20 Q. And you testified that the discussion in that chat was not
21 relevant to this case; right?

22 A. Not to the litigation matter here, yeah.

23 Q. Right. And we acknowledged that together in my
24 questioning; right?

25 A. That's correct.

1 Q. All right. But you were on more than one legal hold, not
2 just this case at that time?

3 A. That's correct.

4 Q. And at any given time, you're actually on holds for many
5 things?

6 A. That's correct.

7 Q. And we also looked at 8030 -- you looked at 8030 again.
8 That was Mr. Walker's e-mail to the group?

9 A. Yes.

10 Q. And he pointed you to a portion of that where it says (as
11 read):

12 "If you must chat on legal hold issues, do so on the
13 record."

14 Right?

15 A. That's correct.

16 Q. But you understand that Google did nothing to make sure
17 that people were actually chatting on the record if they were
18 talking about legal matters that were subject to a hold; right?

19 A. You know, I relied on my legal and compliance teams who
20 were overseeing our practices in this area.

21 Q. Right. And you understand your legal team, in fact,
22 relied on individual users to decide whether a subject they
23 were communicating over Chat was relevant to the issues covered
24 by the legal hold? You understand that that was what they did;
25 right?

1 **A.** That's my understanding, that they instructed them to
2 follow specific instructions once they were covered by a
3 litigation hold.

4 **Q.** Right. But the instruction was: Don't use Chat; but if
5 you do, save it on the record if it's relevant to the matters
6 covered by the legal hold? Right?

7 **A.** That's correct. That's correct.

8 **Q.** And they left it to the individual to make that call of
9 does this relate to a legal hold or a matter covered by a legal
10 hold? That was up to that individual employee; right?

11 **A.** That's correct.

12 **Q.** And I think you would agree with me that not everyone
13 subject to a legal hold within Google has an understanding of
14 what matters are actually covered by a legal hold, wouldn't
15 you?

16 **A.** Again, I rely on the communication and the training which
17 our teams provide to employees in these matters, yeah.

18 **Q.** Would you agree with me, sir, that not every employee at
19 Google who receives a legal hold has an understanding of what
20 the full scope of the matters are that are relevant to the
21 reason they were on a legal hold. Do you agree with that?

22 **A.** Yes, but I would expect them to get advice from a lawyer
23 if they have questions in their mind.

24 **Q.** Okay. So your view of how this would go down as every
25 single time a person decided to write a chat, that they were

1 going to call up their lawyers and see "Do I need to keep
2 this?"

3 **A.** That's not my view, but they received *a priori*
4 instructions once there was a litigation hold; and, you know,
5 if you had questions, you know, you could clarify with our
6 legal teams.

7 **Q.** Do you know all the issues that are relevant to the case
8 we're here for today?

9 **A.** Yeah. Recently, yes.

10 **Q.** Okay. What are they? What are all of the issues that are
11 relevant to the matters that are being tried here in this
12 trial?

13 **A.** I mean, this is to do with Google Play, how we operate our
14 Google Play Store, the service fees we charge for developers,
15 and the practices associated with this, but there are a lot of
16 peripheral issues associated with it.

17 **Q.** That's your full understanding?

18 **A.** It's part of my understanding. I'm not a legal expert.
19 That's part of my understanding.

20 **Q.** Right. But in terms of your decisions of whether and to
21 what extent to chat on the record, that's what you had in mind?

22 **A.** I have multiple litigation holds so I generally don't
23 discuss substantive matters. I typically use Google Chat for
24 administrative purposes, for scheduling purposes, and so we
25 don't engage in -- you know, I don't engage in substantive

1 discussions on matters, you know, related to all of this.

2 Q. So your sworn testimony here today is that you never sent
3 a single chat over -- let's just say the last two and a half
4 years while discovery was happening in this case about any of
5 the subjects that are even possibly relevant to the issues in
6 this case?

7 A. I'm saying not in a substantive way. Somebody could have
8 pinged me and said, "Let's have a meeting to do with..." You
9 know, and I would say, "Yes. Please schedule." So it depends
10 on what -- you know.

11 Q. Okay. So then I'll just confirm. Is it your sworn
12 testimony that you never sent any substantive communication
13 whatsoever about any of the issues that are even possibly
14 relevant to the issues in this case?

15 A. Not that I recall.

16 Q. Okay. But you can't swear that you didn't do that; right?

17 A. To the best of my recollection, I don't recall discussing
18 anything in a substantive way.

19 Q. And if you had, your sworn testimony is you would have put
20 history on?

21 A. Sorry. Repeat the question.

22 Q. If you had had such a discussion, is it your sworn
23 testimony that you would have put history on?

24 A. Yeah. If I was going to engage in a substantive
25 discussion on a matter covered by a litigation hold, yes, I

1 would turn it on.

2 Q. Are you aware that Google produced a total of eight chats
3 total with you as a participant?

4 A. Sorry, I wasn't aware of that.

5 Q. And we saw one where you asked for it to be deleted and
6 turned off history; right?

7 A. That's correct.

8 Q. And so other than your lack of recollection, we have no
9 way of knowing whether and to what extent you sent any
10 substantive business chats whatsoever over the last
11 three years?

12 A. There are some group discussions where the default is on.
13 So, you know, so that would be the cause of those. If I had
14 done any other time, if I specifically asked for a setting to
15 be deleted off, I think, you know, that could have come up in
16 discovery. So, you know, I can only tell I've used Chat for a
17 long time but, you know, I don't discuss substantive matters
18 related to litigation hold using Google Chat.

19 Q. You're saying that if you had done this more to ask
20 history to be turned off, we would have had it; is that your
21 view?

22 A. Possibly, yeah.

23 Q. Right. But if history remained off, as it was set to be
24 by default, we would never see anything you said in those
25 chats?

1 **A.** You know, my understanding is it only will delete the chat
2 after a request was made. So that's how my understanding is.
3 I may be wrong in that.

4 **Q.** Well, but you agree that history was off by default;
5 right?

6 **A.** In the conversation of history was off, yes. Yeah.

7 **Q.** Right. And that's the default; right?

8 **A.** That's correct.

9 **Q.** For the entire enterprise of Google since 2008; right?

10 **A.** That's correct.

11 **Q.** Okay. So every chat that was started since 2008 was
12 started with history off?

13 **A.** We've had multiple products since then, so I'm not fully
14 sure, but I would assume so, yes.

15 **Q.** Yeah. You assume that after that e-mail went out that we
16 looked at, history was off by default such that every chat that
17 was started for a one-on-one or group chat was off by default
18 unless and until someone took an action to turn it on?

19 **A.** That's correct.

20 **Q.** And so unless they did, we would have no record of
21 anything that you said in any of those chats?

22 **A.** That's correct.

23 **Q.** Profits, let's talk about that, and then I think we're
24 done.

25 You were asked about that deck that we looked at earlier.

1 That's 2728; is that right?

2 A. That's correct.

3 Q. And we'll put that back on the screen for you.

4 I think you made a point to say that 97 percent of
5 developers don't pay?

6 A. Yes.

7 Q. So am I right, then, that this \$4.4 billion of profits
8 were paid by 3 percent of the Android developers?

9 A. That's correct.

10 Q. And I think you said -- your testimony was that there's
11 Android development costs that are factored in in people's
12 minds but aren't sort of reflected here; right?

13 A. Not just factored. The board has a very clear
14 understanding of what the business is. They know we invest in
15 Android and, you know, we do capital allocation. So we invest
16 tens of thousands of engineers. We have big marketing teams.
17 We have big go-to-market costs associated with --

18 Q. So they're aware?

19 A. Very aware.

20 Q. They're aware of these costs?

21 A. Very aware.

22 Q. Okay. But you don't actually know which of those costs
23 are, in fact, reflected in here already and which aren't;
24 right?

25 A. I don't know all the underlying details, but I know none

1 of the broad Android costs are allocated here.

2 **Q.** Well, you can't tell this jury line by line anything about
3 what is included and what is not included in these numbers;
4 right?

5 **A.** Not at a line-by-line detail like my accountant or CFO
6 would; but in a -- to give context around it, yes, I can.

7 **Q.** Sir, you cannot tell the jury which costs are in and which
8 costs are out of any of these numbers; right?

9 **A.** I can say YouTube costs are not involved in this line
10 item. So it depends on your question.

11 **Q.** Okay.

12 **A.** This will have a million lines underneath it, yes, so I
13 can't answer to every one of those millions of lines; but at a
14 high level I can answer this is the Google Play team's view of
15 the costs. So, you know, it won't include -- you know,
16 typically it won't include costs from outside this group.

17 **Q.** Right. So YouTube, you just gave as an example, is
18 nowhere to be found here?

19 **A.** For sure.

20 **Q.** But you can't tell me which of these Android development
21 costs that you're saying are already in here and which ones are
22 not; right?

23 **A.** I can say that the vast majority, 90-plus percent of
24 Android costs are not in this line item.

25 **Q.** Okay. Well, let's -- I think I want to ask you another

1 question there just to make sure that that's right.

2 So you don't know what Google Play's operating margin
3 would be if you factored in whatever the correct amount of
4 Android development costs are; right?

5 A. That's correct.

6 Q. Right. You cannot tell us that number?

7 A. That's correct.

8 Q. You would be speculating?

9 A. That's correct.

10 Q. So if I even asked you to give me a range of what the
11 operating margin would be, you would not be able to do so;
12 right?

13 A. I know Android costs is in the billions of dollars, so I
14 would have some sense it would be a very dramatically different
15 picture, but I can't give you specific ranges, yeah.

16 Q. You cannot even give me a range of what the operating
17 margin would be if you factored in these Android development
18 costs; right?

19 A. It would be -- it would swing this in a dramatically
20 different direction, I can tell you that much, but I can't give
21 you a narrow range, yes.

22 Q. All right.

23 MS. MOSKOWITZ: Your Honor, 130, please, page,
24 lines 15 to 19.

25 (Pause in proceedings.)

1 **THE COURT:** Okay. Yeah, that's fine.

2 **BY MS. MOSKOWITZ:**

3 **Q.** You were asked the following question at your deposition
4 and gave the following answer (as read):

5 **"QUESTION:** Other than it would be lower than 65 percent,
6 do you have any range that you could give me of what the
7 operating margin would be?

8 **"ANSWER:** I don't want to speculate the number."
9 Was that your testimony?

10 **A.** Yeah, that's correct.

11 **Q.** And you cannot recall ever having seen a document that
12 does, in fact, allocate Android development costs to
13 Google Play?

14 **A.** Not that I recall.

15 **Q.** No. You've not seen that; right?

16 **A.** That's correct.

17 **Q.** And the metrics that were presented to the board of
18 directors that we're looking at right here include the costs
19 that the Google finance team determined were necessary to
20 calculate an operating margin to present to the board; right?

21 **A.** That's correct.

22 **Q.** And the view that was presented to the board for their
23 analysis and their understanding of Google Play was that there
24 was an operating margin of 65 percent; correct?

25 **A.** That's correct.

1 **MS. MOSKOWITZ:** No further questions.

2 **THE COURT:** Okay. Let's take lunch. We'll come back
3 at about let's say 12:40. We're going to stay a little bit
4 later today just to make up that half hour, not too much. Just
5 a little bit. So I'll see you at 12:40.

6 If you don't mind, just stay there, Mr. Pichai.

7 **THE CLERK:** All rise.

8 (Proceedings were heard out of the presence of the jury:)

9 **THE COURT:** All right. The jury has been excused for
10 lunch, and I have a couple of questions to ask out of the
11 presence of the jury. Not too many.

12 Let me start with this: So, Mr. Pichai, when a litigation
13 hold comes into Google, who do you as chief executive officer
14 rely on to advise you and other Google employees about the
15 subject matters covered by a hold?

16 **THE WITNESS:** It is our legal and compliance teams.
17 In my case it would often be either Mr. Kent Walker or someone
18 senior from his team.

19 **THE COURT:** Okay. And leaving -- you know, let's say
20 leaving the CEO aside, who would you rely on to advise, I'll
21 just say, the rank and file employees about the subject matters
22 covered by a hold?

23 **THE WITNESS:** It will be legal counsel for the
24 respective teams. So, you know, who would be -- so, for
25 example, if you're working on Android, we have an Android legal

1 team, and they would reach out and give instructions in the
2 case of a litigation hold.

3 **THE COURT:** All right. And do they all answer to
4 Kent Walker ultimately?

5 **THE WITNESS:** That's correct, Your Honor.

6 **THE COURT:** Okay. And in this case do you recall what
7 you were told -- how you were told about the subject matters
8 that were covered? For example, did you get a document that
9 identified each topic by subject matter or was there some other
10 communication?

11 **THE WITNESS:** I would get an e-mail with detailed
12 instructions in the e-mail; but for -- in my case, I would
13 always typically have a conversation to understand more any
14 other context I should directly with my chief legal officer.

15 **THE COURT:** But there was an e-mail -- in terms of
16 written documents, there was at least an e-mail you got.

17 **THE WITNESS:** Yeah, direct e-mail which would come to
18 me.

19 **THE COURT:** All right. And is it your
20 understanding -- I know you're not the lawyer, but is it your
21 understanding that since 2008 through today, through
22 November 2023 and each and every day in between, it has been
23 Google's policy to let each individual employee who is subject
24 to a litigation hold to decide whether or not to preserve a
25 chat?

1 **THE WITNESS:** There have been some recent changes in
2 terms of how the policies are set; but, you know, for a long
3 time it's been we would give instructions around the litigation
4 hold to employees and, yes, it's -- the employees then have to
5 make the decisions.

6 **THE COURT:** Okay. So leaving aside the recent
7 changes, the answer to my question is yes?

8 **THE WITNESS:** Yes, Your Honor.

9 **THE COURT:** Okay. And when were these changes that
10 you mentioned implemented?

11 **THE WITNESS:** I recall some changes around February of
12 this year and later some changes in April of this year.

13 **THE COURT:** Okay. So let's say first quarter of 2023
14 roughly?

15 **THE WITNESS:** Yes. I can't be absolutely sure.
16 That's the best of my recollection.

17 **THE COURT:** I understand.

18 And do you know what those changes are? How was the Chat
19 policy changed?

20 **THE WITNESS:** Your Honor, my understanding is that we
21 changed the Chat to be default on now for all Googlers by
22 default.

23 **THE COURT:** Okay. So, in other words, it's done a
24 180. So the default now is always on --

25 **THE WITNESS:** That's correct.

1 **THE COURT:** -- unless somebody intentionally opts out?

2 **THE WITNESS:** That's correct, Your Honor.

3 **THE COURT:** Okay. There are others I know who will
4 have more knowledge, I appreciate it.

5 Okay. You're free to go, and thank you very much.

6 And see you all at 12:40.

7 **THE WITNESS:** Thank you, Your Honor.

8 (Witness excused.)

9 **THE CLERK:** All rise. Court's in recess.

10 (Luncheon recess was taken at 12:09 p.m.)

11 **AFTERNOON SESSION**

12:50 p.m.

12 (Proceedings were heard out of the presence of the jury:)

13 **THE COURT:** What would you like to raise?

14 **MR. DIXON:** Your Honor, Doug Dixon.

15 We had one issue with respect to opening the door. We
16 believe Google opened the door to regulatory activity relating
17 to the Play Store as it relates to the special deal Google
18 entered into with Spotify, and we intend to ask Google employee
19 Kirsten Rasanen about this regulatory activity.

20 So last week, as you may recall, Google elicited testimony
21 from Purnima Kochikar about the motivations behind Google
22 entering a special deal with Spotify, and she said that it was
23 to compete with Apple.

24 And then Google's counsel elicited testimony whether it
25 was important to enter into this deal because Spotify was an

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1 agitator or because Spotify was important to the Play Store;
2 and Ms. Kochikar responded that it was because Spotify was
3 important to the Play Store implying that agitation had nothing
4 to do with it.

5 And if I could, Your Honor, I'd like to pass up the
6 testimony.

7 **THE COURT:** I remember it.

8 **MR. DIXON:** So I'm going to pass up three documents.
9 One is the testimony and two are the documents.

10 **THE COURT:** What is the regulatory door?

11 **MR. DIXON:** Pardon me, Your Honor?

12 **THE COURT:** What is the regulatory door that's been
13 opened in your view?

14 **MR. DIXON:** Yes. So here's what the testimony was. I
15 was going to pass it up to you so you can read it, but I'm
16 happy to read it into the record.

17 **THE COURT:** I know the testimony. I was here. Just
18 pass up whatever document you want.

19 **MR. DIXON:** All right.

20 **THE COURT:** And what is this regulatory door that
21 you're talking about?

22 **MR. DIXON:** Yes, Your Honor. So if you'll look at the
23 first document, it is Exhibit 8553, and on the second page at
24 the top -- and Google's counsel has a copy of it -- you'll see
25 that they are discussing removing a policy exception, making a

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1 change to Google's policy with respect to the use of
2 Google Play Billing. And it says that they spoke to over 35
3 major app developers, and believe agitation risk is manageable
4 for the heavy majority -- and then this is the relevant part --
5 except for Spotify who is already influencing work in progress
6 legislation in the European Commission.

7 And then if you go down, it says "To properly execute
8 number three," meaning this policy change, you'll see they're
9 talking about doing a special deal with Spotify.

10 So it says (as read):

11 "Provide clarity on Spotify's ability to further
12 influence the legislation."

13 And then it indicates as well that the expected set of
14 actions Spotify and legislators could take and our response or
15 other planned litigation for each plaintiff; and then C is the
16 key, Your Honor, "Strategic Deal" (as read):

17 "Strategic Deal for Spotify: Offer design, coms, and
18 negotiation strategy."

19 This is what motivated that deal with Spotify. They were
20 worried about the agitation that Spotify was making, as well as
21 Spotify's ability as a major developer and its already ability
22 to influence ongoing regulation legislation going on in the EC.

23 **THE COURT:** All right. Well, you don't need the EC
24 part. You can just stop at --

25 **MR. DIXON:** I think we do --

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1 **THE COURT:** -- stop at Spotify who is already --
2 "manageable except for Spotify," period. Just stop there.

3 We're not going to do EC. We're not going to do that.
4 Okay? It's just not going to happen.

5 So if you want to use this, you can stop at "Spotify --
6 "except for Spotify" and take out that other reference to
7 "providing further influence on legislation." It's too much of
8 a sideshow for the trial.

9 **MR. DIXON:** Okay.

10 **THE COURT:** Now what's the one for 1438?

11 **MR. DIXON:** So 1438 is along the same lines,
12 Your Honor. It starts on page 3 of 1438. Midway down you'll
13 see that there's some highlighting identifying, again, there is
14 discussion about Spotify being concerned because there's some
15 chance that they're going to the EC. I think consistent with
16 Your Honor's prior ruling, if there's nothing about the EC, we
17 don't need to use that.

18 **THE COURT:** Take any references out to EC or
19 legislation. Okay?

20 **MR. DIXON:** Okay.

21 **THE COURT:** All right.

22 **MR. KRAVIS:** Thank you, Your Honor.

23 **MR. DIXON:** Thank you, Your Honor.

24 **THE COURT:** All right. Let's bring them in.

25 (Proceedings were heard in the presence of the jury:)

1 **THE COURT:** Who do we have next?

2 **MR. BORNSTEIN:** Your Honor, our next witness is going
3 to be testifying by deposition.

4 **THE COURT:** Okay.

5 **MR. BORNSTEIN:** His name Eric Chu, C-H-U.

6 **THE COURT:** Okay.

7 **MR. BORNSTEIN:** And before we begin the deposition, I
8 have a number of exhibits to offer.

9 **THE COURT:** Okay. They're all agreed to?

10 **MR. BORNSTEIN:** Yes, they are, Your Honor. And
11 Ms. Clark has the list, but I can read them into the record if
12 that's helpful.

13 **THE COURT:** Okay. Let's wait for Ms. Clark.

14 (Pause in proceedings.)

15 **THE COURT:** All right.

16 **MR. BORNSTEIN:** Thank you.

17 Your Honor, we move the admission of the following
18 exhibits: 298, 299, 300, 303, 304, 305, 308, 312, 316, 319,
19 320, 322, 332, and 949.

20 **MR. KRAVIS:** No objection.

21 **THE COURT:** Okay. Those are all admitted.

22 (Trial Exhibits 298, 299, 300, 303, 304, 305, 308,
23 312, 316, 319, 320, 322, 332, and 949 received in
24 evidence.)

25 **THE COURT:** Go ahead.

CHU - VIDEOTAPED TESTIMONY

1 **MR. BORNSTEIN:** Thank you, Your Honor.

2 (Video was played but not reported.)

3 **THE COURT:** What is that noise?

4 **TECH PERSONNEL:** It's on the video.

5 **THE COURT:** It's on the video?

6 **TECH PERSONNEL:** Yes.

7 **THE COURT:** Is it going to be like that for the whole
8 video?

9 **TECH PERSONNEL:** I'm afraid so. It's a Zoom depo.

10 **THE COURT:** I'm sorry. All right. Go ahead.

11 (Videotaped deposition resumed, not reported)

12 **THE COURT:** Okay. Let's stand up and stretch.

13 (Pause in proceedings.)

14 **THE COURT:** Who's next?

15 **MR. BORNSTEIN:** Back to live witnesses, Your Honor.
16 Epic calls Hiroshi Lockheimer.

17 **THE COURT:** Okay.

18 **THE CLERK:** Will you please raise your right hand?

19 **HIROSHI LOCKHEIMER,**
20 called as a witness for the Plaintiff, having been duly sworn,
21 testified as follows:

22 **THE WITNESS:** I do.

23 **THE CLERK:** Please be seated.

24 Please state your full name for the Court and spell your
25 last name.

LOCKHEIMER - DIRECT / BORNSTEIN

1 **THE WITNESS:** Sure. My name is Hiroshi Lockheimer.

2 **THE CLERK:** Use the microphone.

3 **THE COURT:** Pull it closer to you.

4 **THE WITNESS:** Closer? Sorry.

5 My name is Hiroshi Lockheimer, L-O-C-K-H-E-I-M-E-R.

6 **THE CLERK:** Thank you.

7 **DIRECT EXAMINATION**

8 **BY MR. BORNSTEIN:**

9 **Q.** Mr. Lockheimer, good afternoon.

10 **A.** Good afternoon.

11 **Q.** Now, you work at Google; correct?

12 **A.** I do.

13 **Q.** And you joined Google in 2006; correct?

14 **A.** That's right.

15 **Q.** And since that time, you've had responsibilities for,
16 among other things, the Android platform; correct?

17 **A.** Sure. I joined the Android team initially. I wasn't -- I
18 wouldn't say I was responsible for it in the beginning, but
19 I've been promoted over time.

20 **Q.** Your responsibilities have included work on Android
21 through that whole time; correct?

22 **A.** Correct.

23 **Q.** Okay. And in 2015, you became a senior vice president
24 with responsibility for the platforms and ecosystems group;
25 correct?

LOCKHEIMER - DIRECT / BORNSTEIN

1 A. That's right. We didn't call it that back then but, yes.
2 We're now called platforms and ecosystems but, yes.

3 Q. And you became the senior vice president of that group in
4 2015?

5 A. Correct.

6 Q. And that group, the platforms and ecosystems group,
7 covers, among other things, Android and Google Play; yes?

8 A. Yes.

9 Q. And you report directly to Mr. Pichai, the CEO; is that
10 right?

11 A. I do.

12 Q. And before he left the company, one of the people who
13 reported to you who we've all met in this courtroom is Jamie
14 Rosenberg; right?

15 A. Jamie did report to me, yes.

16 Q. In your role as SVP of platforms and ecosystems, you are
17 responsible for all of Google's consumer-facing platforms and
18 ecosystems; right?

19 A. Yes, I think so.

20 Q. So in addition to Android and Google Play, your
21 responsibilities include the Chrome browser; is that right?

22 A. Chrome browser is one of them, yeah.

23 Q. Yeah. And they also -- and your responsibilities also
24 include the Chrome OS; correct?

25 A. Correct.

LOCKHEIMER - DIRECT / BORNSTEIN

1 Q. That's the Chrome operating system?

2 A. That's right.

3 Q. So Android is Google's operating system for smartphones
4 and some other devices; right?

5 A. Sure. Tablets, watches, things like that, yeah.

6 Q. Whereas, Chrome OS is Google operating for laptops and
7 desktop PCs; correct?

8 A. PCs, that's right.

9 Q. So you would agree that mobile OSs like Android serve
10 different devices from computer OSs like Chrome; correct?

11 A. Chrome OS, yes.

12 Q. Yes, Chrome OS. Thank you. I agree.

13 So I'll just make it clear. Mobile OSs like Android serve
14 different devices than computer OSs like the Chrome OS;
15 correct?

16 A. Typically. Typically, yes.

17 Q. And they serve different needs, different use cases,
18 different customer segments, different partners; fair?

19 A. Not necessarily. I mean, the use cases may be similar. I
20 browse on the PC. I browse on my phone. I mean, that's a same
21 use case.

22 **MR. BORNSTEIN:** Your Honor, may I take a look at
23 page 30, lines 17 through 24?

24 **THE WITNESS:** Am I -- oh, okay.

25 (Pause in proceedings.)

LOCKHEIMER - DIRECT / BORNSTEIN

1 **THE COURT:** That's fine.

2 **BY MR. BORNSTEIN:**

3 **Q.** Mr. Lockheimer, do you remember you and I met when we
4 spent time on a deposition earlier?

5 **A.** I do remember that.

6 **Q.** Okay. And you gave testimony at your deposition under
7 oath; correct?

8 **A.** Correct.

9 **Q.** And at your deposition do you remember being asked this
10 question and answer -- and give this answer? (as read):

11 **"QUESTION:** Why does Google maintain these two different
12 operating systems for different types of devices?

13 **"ANSWER:** Well, you partially answered it. It's partially
14 because it's for different types of devices. It's also
15 because they serve different needs, different use cases,
16 different customer segments, different partners."

17 Did you give that answer under oath, sir?

18 **A.** I did give this answer, yeah.

19 **Q.** All right. Let me ask you a true-or-false question.

20 True or false: People change their phones every
21 six months?

22 **A.** It depends on the person.

23 **Q.** On average, sir, people change their phones every
24 six months?

25 **A.** False.

1 Q. False. So that statement we heard earlier in this trial
2 in this courtroom, false; correct?

3 A. I don't know. I wasn't here earlier today, so I don't
4 know what you heard; but if your question is every six months
5 for the average person, that doesn't seem typical to me.

6 Q. All right. Thank you.

7 Now, you're familiar with something called the Android
8 Open-Source Project; is that right?

9 A. Mm-hmm, yes.

10 Q. And that's sometimes abbreviated AOSP?

11 A. Correct.

12 Q. I will try and say AOSP. I may slip.

13 A. It's a mouthful.

14 Q. So AOSP, the Android Open-Source Project, is an operating
15 system that is available to phone manufacturers for free
16 without a license from Google; is that right?

17 A. That's right.

18 Q. So anyone can just go download the AOSP operating system
19 from the Internet, for example?

20 A. That's right.

21 Q. And AOSP, in addition to including an operating system,
22 has certain open-source apps; right?

23 A. Yes. Sure.

24 Q. But AOSP does not include certain Google apps like, for
25 example, the Chrome browser that you have responsibility for?

1 **A.** Well, portions of Chrome are actually open sourced as part
2 of a Chromium project, similar; but I understand what you're
3 saying. There are certain Google apps that are not open
4 source.

5 **Q.** Okay. So I'll ask the question again.

6 The Chrome browser itself is not part of the AOSP
7 available for free over the Internet; correct?

8 **A.** It is not a part of AOSP, but it is a part of Chromium,
9 which is open sourced.

10 **Q.** Okay. The Chrome browser is not part of the AOSP that is
11 available over the Internet? That's correct; right?

12 **A.** Correct. Chrome browser is not part of AOSP.

13 **Q.** Thank you.

14 And Gmail is not part of AOSP; right?

15 **A.** Correct.

16 **Q.** And YouTube is not part of AOSP; correct?

17 **A.** That's right.

18 **Q.** And Google Maps is not part of AOSP; correct?

19 **A.** Yes.

20 **Q.** And there are a variety of proprietary Google APIs that
21 are also not part of AOSP; is that right?

22 **A.** That's right.

23 **Q.** Can you please turn in the binder you have in front of
24 you -- I know it's big -- would you please turn to Exhibit 647?

25 This is already in evidence, Your Honor.

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1 **A.** 617?

2 **Q.** 647, Mr. Lockheimer.

3 **A.** Sorry. Sorry. Yeah, it was hidden.

4 (Witness examines document.) I see it.

5 **Q.** Great.

6 **MR. POMERANTZ:** Your Honor, we have an objection to
7 this, which is foundation. I think they should first see if
8 there's a foundation for this witness to answer questions on
9 this document.

10 **THE COURT:** The document is in evidence?

11 **MR. BORNSTEIN:** Yes, Your Honor.

12 **THE COURT:** All right. That's fine. Go ahead and use
13 it.

14 **MR. BORNSTEIN:** Thank you, Your Honor.

15 **BY MR. BORNSTEIN:**

16 **Q.** I'd like to ask you to take a look, Mr. Lockheimer, at
17 page 7 of the document.

18 If you can put that on the screen.

19 **A.** Page 7.

20 (Witness examines document.) Okay. Yep.

21 **Q.** My first question is an easy one. That's you in the
22 picture; right?

23 **A.** It looks like it.

24 **Q.** Okay.

25 **A.** It's a bit cringy but, yes, that's me.

1 Q. And this document says -- and those of us, by the way, in
2 the courtroom yesterday, we saw this --

3 A. Oh, you did?

4 Q. -- slide during one of your colleague's testimony.

5 A. Got it.

6 Q. Now, at the top of this slide it says "Android Open-Source
7 Project (AOSP)"; right.

8 So this -- sorry. You just need to give an answer the
9 court reporter can take down.

10 A. Yes, it says that, Android Open-Source Project.

11 Q. Thank you. I know it's sometimes unnatural. We nod and
12 say things like "mm-hmm."

13 A. Sorry.

14 Q. And it says in the bottom right corner "Make it open
15 source and free"; correct?

16 A. I do see that.

17 Q. And so what's being described here as open source and free
18 is AOSP; correct?

19 A. Let me look at the slide, what the slide is talking about.
20 I didn't create these slides.

21 (Witness examines document.) It's hard to tell, but it
22 seems like the "make it open source" entry is referring to
23 Android Open-Source Project.

24 Q. Great.

25 A. That's what it seems like.

1 Q. Okay. Thank you.

2 And in addition to licensing Android to phone makers,
3 Google also makes available a license to something called GMS;
4 correct?

5 A. Correct.

6 Q. And GMS stands for Google Mobile Services?

7 A. Yes.

8 Q. And Google Mobile Services or GMS is something that gets
9 layered on top of AOSP; correct?

10 A. Optionally, yes.

11 Q. Yeah. For those who take it; right?

12 A. For those who want it, right.

13 Q. Okay.

14 A. Yeah.

15 Q. And GMS is a collection of Google apps; correct?

16 A. That's right.

17 Q. And that includes some of the ones we talked about before,
18 like Chrome and Google Maps and YouTube; correct?

19 A. That's right.

20 Q. And these are very popular apps with consumers?

21 A. It seems like it.

22 Q. And because they're popular apps, phone makers want to
23 have those apps on their phones when they take them out of the
24 box; right?

25 A. You'd have to ask the phone manufacturers, but it seems

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1 like a reasonable statement.

2 **Q.** Well, the phone manufacturers want the GMS apps because
3 they think the consumers like them; correct?

4 **A.** I would -- I would think so.

5 **Q.** Okay. The GMS apps are a highly sought after set of
6 products; is that right?

7 **A.** A lot of users use them. Sought after by OEMs, I don't --
8 you'd have to ask the OEMs.

9 **Q.** All right. Let's take a look at Exhibit 1376 in your
10 binder, please.

11 **A.** (Witness examines document.) Okay.

12 **Q.** And Exhibit 1376 is an e-mail string from 2011 in which
13 you participated; correct, sir?

14 **A.** Looks like it, yes.

15 **MR. BORNSTEIN:** Your Honor, I move the admission of
16 Exhibit 1376.

17 **MR. POMERANTZ:** No objection, Your Honor.

18 **THE COURT:** At admitted.

19 (Trial Exhibit 1376 received in evidence.)

20 **BY MR. BORNSTEIN:**

21 **Q.** And if we call up the first page here, you can see --
22 either on the screen or in front of you, whatever is easier,
23 sir -- in the middle there is an e-mail from you dated April 7,
24 2011. Do you see that e-mail.

25 **A.** I do.

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1 Q. And you say in the third line of that e-mail (as read):

2 "GMS is a highly sought after set of products."

3 Correct?

4 A. I did write that.

5 Q. All right. Now, to be able to preload the GMS apps on an
6 Android phone, a phone maker has to sign an agreement with
7 Google first called the Mobile Application Distribution
8 Agreement; correct?

9 A. First before?

10 Q. Before being -- in order to load those apps -- preload
11 those apps onto a phone --

12 A. Oh, sure.

13 Q. -- that phone maker must be a signatory to one of these
14 Mobile Application Distribution Agreements?

15 A. That's my understanding, yes.

16 Q. Okay. And sometimes people call them MADA or a MADA?

17 A. MADA is how I call it but, yes.

18 Q. Okay. I may get that wrong sometimes.

19 A. It's all right.

20 Q. All right. So that's different from AOSP, which is
21 available without a license from Google; right?

22 A. That's right.

23 Q. And the GMS apps, this highly sought after set of products
24 and APIs, those are available only from Google and nowhere
25 else; right?

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1 **A.** Right, because they're Google's products.

2 **Q.** Right.

3 **A.** Yeah.

4 **Q.** And so while AOSP may be free to everyone, the GMS apps
5 bring OEMs to the negotiating table with Google; right?

6 **A.** Well, they're Google's apps, so if people want to
7 download -- if OEMs want to preload Google's apps, they should
8 talk to Google, yes.

9 **Q.** All right. So let's take Exhibit 1376 back on the screen
10 already in evidence, and I just want to finish that sentence I
11 was reading to you (as read):

12 "GMS is a highly sought after set of products and it
13 brings OEMs to the negotiating table."

14 You wrote that, sir; correct?

15 **A.** It looks like it from 2011, yeah.

16 **Q.** Right. And, in fact, every Android smartphone sold in the
17 United States today has the GMS apps preloaded; correct?

18 **A.** Every Android phone sold in the U.S. today... I don't know
19 if that's true.

20 **Q.** All right.

21 **MR. BORNSTEIN:** Can we take a look, please,
22 Your Honor, at page 97 of the deposition? And I'm looking at
23 lines 15 through 24, Your Honor.

24 (Pause in proceedings.)

25 **THE COURT:** That's fine.

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1 **BY MR. BORNSTEIN:**

2 **Q.** So at your deposition, Mr. Lockheimer, you were asked (as
3 read):

4 "Are you aware -- are you aware of any Android
5 smartphones that are sold in the United States without GMS
6 and the GMS core today?"

7 You clarified the question (as read):

8 "Android smartphones in the U.S. without GMS or GMS
9 core; is that right?"

10 I said, "Correct."

11 And you answered (as read):

12 "Those are the conditions? No, I don't -- if you're
13 talking about smartphones specifically, no, I don't know.
14 I don't think so, but I don't know."

15 Correct?

16 **A.** Maybe I misheard you. I thought your question was Android
17 phones. You didn't say smartphones so that's why I'm not sure.
18 There may be Android phones that are not smartphones.

19 **Q.** All right. Well, I'm happy to take the correction if
20 that's what I said.

21 Are you aware of any Android smartphones sold in the
22 United States today that do not have the GMS apps preloaded?

23 **A.** I don't think so. I don't know, but I'm not sure.

24 **Q.** Okay. And so all of those smartphones would have been
25 made by somebody who signed a MADA or MADA; correct?

1 **A.** Most likely, yes.

2 **Q.** And so all of those phone makers would have had to come to
3 the negotiating table with Google; correct?

4 **A.** If they wanted MADA, yes.

5 **Q.** All right. So the slide we saw with your picture on it
6 yesterday and again today that said, "Make it open source and
7 free," that Android Open-Source Project, AOSP, is not being
8 used by any Android smartphone in the United States today; is
9 that right? They're all using GMS?

10 **A.** Sorry. I'm confused by that.

11 GMS doesn't refer to the operating system. AOSP refers to
12 the operating system.

13 **Q.** And the GMS core sits on top; correct? We said it's
14 layered on top?

15 **A.** On top of the operating system. On top of AOSP.

16 **Q.** Right. So there's no Android smartphone being sold today
17 in the United States that's open source and free using only
18 AOSP without also having the GMS core and a license from
19 Google; correct?

20 **A.** Just to clarify, I think you're asking me the same
21 question, which is fine. You're asking me the same as question
22 as before.

23 I don't know, but I think you're right.

24 **Q.** Okay. Can I ask you to look at a different document in
25 your binder? It's Exhibit 1390.

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1 **A.** 1390 you said?

2 **Q.** Yes.

3 And while you're looking, to be clear, you can't name any
4 smartphone -- Android smartphone in the United States today
5 that is sold without GMS preloaded; correct?

6 **A.** Right. I can't name one, but --

7 **Q.** Okay.

8 **A.** -- yeah.

9 **Q.** Okay. Let's look at Exhibit 1390, please.

10 **A.** (Witness examines document.)

11 **Q.** Are you there?

12 **A.** I'm at 1390.

13 **Q.** Okay. Exhibit 1390 is an annual planning presentation
14 from 2021 for the platforms and ecosystems group. That's your
15 group; correct?

16 **A.** Correct.

17 **MR. BORNSTEIN:** Your Honor, I'd move the admission of
18 Exhibit 1390.

19 **MR. POMERANTZ:** No objection, Your Honor.

20 **THE COURT:** It is admitted.

21 (Trial Exhibit 1390 received in evidence.)

22 **MR. BORNSTEIN:** Great.

23 **BY MR. BORNSTEIN:**

24 **Q.** And I'm going to move through two more documents very
25 quickly, Mr. Lockheimer.

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1 The next one is Exhibit 433. Just jump to that one.

2 **A.** Oh, okay. 433.

3 **Q.** I'm doing some litigation plumbing here.

4 **A.** No worries. I'm going to move this for a second.

5 (Witness examines document.) Okay. I'm at 433.

6 **Q.** Thank you.

7 And Exhibit 433, this is another presentation relating to
8 the platforms and ecosystems group, and it says on the front
9 "Hiroshi Ruth Review." Do you see that?

10 **A.** I do.

11 **Q.** So that's your group again?

12 **A.** Yes.

13 **Q.** All right.

14 **MR. BORNSTEIN:** Your Honor, I move the admission of
15 433.

16 **MR. POMERANTZ:** No objection, Your Honor.

17 **THE COURT:** It's admitted.

18 (Trial Exhibit 433 received in evidence.)

19 **BY MR. BORNSTEIN:**

20 **Q.** I've got one more, Mr. Lockheimer. If you'd look at
21 Exhibit 5641.

22 **A.** Oh, wow. Okay.

23 **Q.** I warned you. It's a big binder.

24 **A.** It's a workout. 5641.

25 (Witness examines document.) Okay. I'm at 5641.

1 Q. Great.

2 So 5641, this is another Google presentation. It says
3 "P&E." That's your group; right?

4 A. Correct.

5 Q. "The 2021 Annual Plan"; correct?

6 A. That's what it says, yes.

7 MR. BORNSTEIN: Your Honor, I'd move the admission of
8 Exhibit 5641.

9 MR. POMERANTZ: No objection.

10 THE COURT: It's admitted.

11 (Trial Exhibit 5641 received in evidence.)

12 BY MR. BORNSTEIN:

13 Q. All right. Enough with the documents.

14 So, Mr. Lockheimer, working with Samsung is an important
15 part of your job; correct?

16 A. Sure.

17 Q. And you consider Samsung to be both a partner and a
18 competitor; right?

19 A. Primarily partner but there are areas in which we compete,
20 yes.

21 Q. So you consider them to be both, a partner and a
22 competitor; fair?

23 A. I suppose so, yeah.

24 Q. And on the partner side, they are Google's biggest partner
25 in Android; right?

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1 A. Yes.

2 Q. And they're the biggest Android phone maker?

3 A. That's right.

4 Q. And it's a very complicated relationship with a lot of
5 different touch points?

6 A. You mean with Samsung?

7 Q. Between Google and Samsung, yes.

8 A. Yeah, that's fair.

9 Q. All right. I'd like to look at some of the examples.

10 So if you could turn to Exhibit 1378 in your binder. This
11 one we'll spend a little time on.

12 A. (Witness examines document.) Sorry. I'm here.

13 Q. Great.

14 Exhibit 1378 is a January 2014 e-mail in which you
15 participated with some of your colleagues at Google; correct?

16 A. Yes. I haven't read it yet, but it looks like it.

17 Q. All right.

18 MR. BORNSTEIN: Your Honor, I'd move the admission of
19 Exhibit 1378.

20 MR. POMERANTZ: No objection, Your Honor.

21 THE COURT: Admitted.

22 (Trial Exhibit 1378 received in evidence.)

23 BY MR. BORNSTEIN:

24 Q. Now, if you look at the bottom, Mr. Lockheimer, there's an
25 e-mail from someone named Lan Roche; is that right?

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1 A. Yes.

2 Q. And Mr. Roche was a member of the partnership's team with
3 Google at this time; correct?

4 A. I believe so, yeah. I know Lan. I don't remember when he
5 was there, but sounds plausible.

6 Q. Okay. And he tells you in this e-mail that Samsung
7 developed a new feature for use inside its apps; correct?

8 A. Sorry. Let me get caught up.

9 Q. It's in the second paragraph (as read):

10 "In summary, Samsung wants to include a feature
11 inside their native applications..."

12 And then it goes on.

13 A. Yeah, I see that part. Thank you.

14 Q. And Mr. Roche told you that Samsung had asked whether this
15 feature would violate exclusivity language in a search deal.

16 Do you see that?

17 A. I do see that.

18 Q. And you told him in response just above that, that Google
19 was planning to build precisely the same feature. Do you see
20 that?

21 That's at 6:48 p.m., sir. It's on the screen too if you
22 don't have it in front of you.

23 A. (Witness examines document.) I do see that, 6:48 p.m.,
24 yep.

25 Q. And your directions were that "They should" -- "they"

1 meaning Samsung -- "should use our implementation"; right?

2 **A.** I wrote "They should use our implementation."

3 **Q.** Meaning that Samsung should use Google's implementation of
4 this particular feature rather than Samsung's implementation;
5 correct?

6 **A.** That seems like it.

7 **Q.** All right. So Mr. Roche then writes back to you a little
8 further up in the document, and he proposes how to respond to
9 Samsung and he says that his proposed solution -- sorry -- that
10 the proposed solution that Samsung was coming up with is
11 counter to the desire between the parties to reduce competing
12 services. Do you see that?

13 **A.** I do.

14 **Q.** All right. And you don't respond to Mr. Roche saying
15 "There's no such thing. There's no desire to reduce competing
16 services"; right? That's not there?

17 **A.** I don't see it, yeah.

18 **Q.** Right. Instead you approve the response, and you say that
19 Mr. Roche's approach sounds fine; correct?

20 **A.** (as read):

21 "I think your approach sounds fine. John, are you
22 cool with it?"

23 **Q.** Right. That's what you wrote?

24 **A.** That's right.

25 **Q.** Okay. Now, one area in which Google and Samsung do

1 compete in your view is on app stores; is that correct?

2 A. They do have an app store, yeah, that's true.

3 Q. And does the Google app store compete with the Galaxy App
4 Store?

5 A. In some sense, yeah.

6 Q. When I say "the Google app store," I mean Google Play of
7 course.

8 A. I understood. Yeah, I understood what you meant.

9 Q. Now, Samsung has previously said to you that user
10 awareness of its app store is low; correct?

11 A. Possibly.

12 Q. All right. Let's take a look at Exhibit 1380 in the
13 binder, please.

14 A. Okay.

15 Q. And Exhibit 1380 is an e-mail string in which you
16 participated in July 2014; correct?

17 A. I'm smiling because the font is really small.

18 Q. I know, Mr. Lockheimer. I've been struggling with it
19 myself. This was how it was produced to us by Google.

20 A. Got it. Got it. I wasn't complaining. I'm just pointing
21 out my eyes are going bad.

22 Q. I have complained so I would not hold it against you.

23 A. So sorry. Your question was?

24 Q. This was an e-mail string in which you participated in
25 July of 2014; correct?

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1 **A.** Yeah. I think it says July 11, 2014.

2 **Q.** Great.

3 **MR. BORNSTEIN:** So, Your Honor, I'd move the admission
4 of Exhibit 1380.

5 **MR. POMERANTZ:** No objection.

6 **THE COURT:** It's admitted.

7 (Trial Exhibit 1380 received in evidence.)

8 **MR. BORNSTEIN:** So let's publish that, please.

9 **BY MR. BORNSTEIN:**

10 **Q.** Now, on the bottom of the very first page -- and I know
11 this is hard. We're going to try and blow it up. It's hard in
12 hard copy as well.

13 So there is at the very bottom of the first page -- if we
14 could blow that up, please -- an e-mail from someone named Gina
15 Johnson.

16 I hope that's better for people to be able see. And at
17 some point perhaps we can pass out hard copies to the jury at a
18 break if people are having trouble.

19 But Ms. Johnson sends this note. You see it says
20 "+Hiroshi. See below"?

21 **A.** I see that.

22 **Q.** All right. So she's forwarding to you what is a news
23 story that appears on the next page; correct?

24 **A.** Let's see.

25 (Witness examines document.) Looks like it, yeah. Yes.

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1 Q. And this news story is about Samsung rebranding its app
2 store; correct?

3 A. (as read):

4 "Samsung rebrands app store as Galaxy Apps."

5 Q. Yeah. And what you do -- if we go back to the first page
6 of this e-mail -- is you forward this news story to somebody
7 named DJ Koh; correct?

8 A. Yes, right there, "Hey, DJ and team."

9 Q. And DJ is a senior executive at Samsung; yes?

10 A. He was, yeah.

11 Q. Okay. And someone who you had a close working
12 relationship; is that fair?

13 A. That's fair.

14 Q. Occasionally you would even text each other; correct?

15 A. About coordination but, sure.

16 Q. Sure. And you tell Mr. Koh in this e-mail that you were a
17 bit surprised by the announcement that's reported in the news
18 story about Samsung rebranding its app store; correct?

19 A. Yeah. You can see I wrote (as read):

20 "Sorry. I was a bit surprised to see this."

21 Q. Right. And you say to him (as read):

22 "As you know, we've been trying hard to collaborate
23 on the content side and the app ecosystem too."

24 You wrote that?

25 A. It looks like it, yes.

1 Q. All right. So this announcement was unexpected to you at
2 the time; fair?

3 A. I think that's fair.

4 Q. And you get a response back to your e-mail from
5 somebody -- not from DJ Koh, but somebody named Hankil Yoon.
6 Do you see that?

7 A. Hankil Yoon, yes.

8 Q. And Mr. Yoon's also a Samsung employee who reported in
9 some way to Mr. Koh; correct?

10 A. At the time, yes.

11 Q. And Mr. Yoon responds by giving you the background that
12 you had asked for. He says (as read):

13 "Let me give you some background to the change."

14 Correct?

15 A. Yeah. On top of that, he also said having -- I guess we
16 visited them and we had a productive discussion with them about
17 this.

18 Q. Yes. No, I understand that he says a lot of things; but
19 if we're going to get through this, let's just focus on the
20 things I'm asking you about. And if we want to look at some
21 more, we can look at some more if the context is needed.

22 Now, first of all, it can't be -- right? -- what you just
23 said can't be true; am I right? Because the first e-mail that
24 you sent to Mr. Koh is dated July 11, 2014; correct?

25 A. All right. What did I say that --

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1 Q. If we go down to the prior e-mail --

2 A. Okay.

3 Q. -- it's dated July 11, 2014.

4 Can we have that on the screen, please?

5 A. Okay.

6 Q. Right. And so on July 11, 2014, you were surprised by
7 this; correct?

8 A. That's what I wrote on that date.

9 Q. Right. So let's look at the response that you got again
10 from Mr. Yoon. That's July 11, 2014.

11 Is it your testimony you went to Korea and had a meeting
12 with Mr. Yoon and his colleagues between these two e-mails, and
13 that's what the productive discussions were that are referred
14 to here?

15 A. That's not what I said. I said I visited -- he says (as
16 read):

17 "Thanks for visiting us this week and having a very
18 productive discussion with us."

19 Q. Yeah. So you said --

20 A. So that's a Friday, so I must have been there that week.

21 Q. Oh, I understand. But you testified a moment ago under
22 oath, Mr. Lockheimer, that the discussions you had were about
23 this app store; is that correct or is that not correct?

24 A. Not about the -- sorry I confused you. I didn't mean
25 about the article. I meant about the collaboration that we

1 were having.

2 Q. You were surprised about this rebranding; right?

3 A. Right.

4 Q. So you were not having a conversation in Korea about this
5 rebranding that surprised you; correct?

6 A. That's why I was surprised, because they didn't bring it
7 up.

8 Q. Right. So the discussions you were having were not about
9 this rebranding; correct?

10 A. Correct. And that's why I was surprised.

11 Q. Exactly.

12 So in this e-mail that you get back from Mr. Yoon he tries
13 to reassure you that you shouldn't be surprised, correct, and
14 you shouldn't worry?

15 A. Where does he -- I don't know if he says I shouldn't be
16 surprised.

17 Q. I'll take you through it.

18 A. Thank you.

19 Q. He says in the third line that (as read):

20 "The previous Samsung apps had grown to a store with
21 70K apps, but its existence was no different from
22 Play Store in many aspects."

23 Correct?

24 A. You're right, that's what he wrote.

25 Q. And he tells you that user awareness was low; correct?

1 **A.** That's what he wrote, yes.

2 **Q.** And he's talking about user awareness of the Samsung App
3 Store; correct?

4 **A.** I assume so.

5 **Q.** And he says the reason it was low is a lack of
6 differentiation. Do you see that?

7 **A.** (as read):

8 "The user awareness was low because of the lack of
9 differentiation."

10 Yeah, he wrote that.

11 **Q.** Right. And differentiation is one way that companies can
12 compete with one another; right? By differentiating their
13 products; fair?

14 **A.** That's one way, yeah.

15 **Q.** And so Mr. Yoon went on in the next line to say to you (as
16 read):

17 "We definitely don't want to compete with
18 Play Store."

19 Correct?

20 **A.** He wrote that, yes.

21 **Q.** And he went on to assure you that this rebranded store, in
22 the next line, will have only a few hundred apps, most of which
23 would be customized for Galaxy specific features. Do you see
24 that?

25 **A.** I do see that, yes.

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1 **Q.** And then near the end of the e-mail, the second-to-last
2 line that's currently on the screen, he says (as read):

3 "I guess there's nothing to be surprised at."

4 Correct?

5 **A.** (as read):

6 "I guess there's nothing to be surprised at."

7 Yes, he wrote that.

8 **Q.** Right.

9 All right. Let me move to a new topic. We can put the --

10 **THE COURT:** All right. Let's take our afternoon
11 break. We'll come back at 2:35.

12 **THE CLERK:** All rise.

13 (Recess taken at 2:20 p.m.)

14 (Proceedings resumed at 2:36 p.m.)

15 (Proceedings were heard in the presence of the jury:)

16 **THE COURT:** Okay.

17 **MR. BORNSTEIN:** Thank you, Your Honor.

18 **BY MR. BORNSTEIN:**

19 **Q.** Mr. Lockheimer, welcome back from the break.

20 **A.** Thank you.

21 **Q.** Now, you're aware that when Epic launched Fortnite on
22 Android, it did so outside of Google Play; correct?

23 **A.** I believe so, yes.

24 **Q.** And before that happened, Epic actually told you that Epic
25 was going to launch outside Google Play in an e-mail; correct?

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1 **A.** Maybe. I've had many conversations -- a number of
2 conversations with Epic, so I don't remember the exact
3 timeline, the sequence of events, but...

4 **Q.** Okay. We'll see the e-mail soon enough.

5 **A.** Okay.

6 **Q.** You were disappointed, am I right, that Epic was planning
7 to launch Fortnite outside of Google Play?

8 **A.** Sure.

9 **Q.** And Google made an effort to persuade Epic to launch
10 Fortnite on the Play Store; correct?

11 **A.** Yes.

12 **Q.** And put together -- Google put together a proposal to make
13 to Epic so that Epic would have Fortnite on the Google Play
14 Store; is that right?

15 **A.** We wanted Epic on the Play Store, yes.

16 **Q.** And Google made a proposal to Epic in order to persuade
17 Epic to put Fortnite on the Google Play Store; correct?

18 **A.** Yes.

19 **Q.** Okay. So there's something called the Business Council at
20 Google; right?

21 **A.** Right.

22 **Q.** And that Business Council has -- you need to go to them to
23 get approval for certain kind of expenditures; right?

24 **A.** Not me. A lot of other people go to it, yes.

25 **Q.** Within Google, there are requirements to go to the

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1 Business Council for certain kinds of expenditures; right?

2 **A.** That's right. I don't know all the details but, yes,
3 there's some forum where approvals happen.

4 **Q.** Great.

5 Well, let's take a look at Exhibit 1385 in your binder,
6 please.

7 **A.** Okay.

8 (Witness examines document.) All right.

9 **Q.** This is a set of e-mails on which you were copied in July
10 of 2018; correct.

11 **A.** Let me find the date.

12 (Witness examines document.) July of 2018, yes.

13 **MR. BORNSTEIN:** Your Honor, I'd move Exhibit 1385 into
14 evidence.

15 **MR. POMERANTZ:** No objection, Your Honor.

16 **THE COURT:** It's admitted.

17 (Trial Exhibit 1385 received in evidence.)

18 **MR. BORNSTEIN:** Publish that, please.

19 **BY MR. BORNSTEIN:**

20 **Q.** I'll direct you to the bottom of page 2, Mr. Lockheimer,
21 and there is an e-mail there, you can see, from someone named
22 Michael Murphy. Do you see that?

23 **A.** I do.

24 **Q.** Okay. And you're aware this is shortly after Fortnite had
25 informed -- excuse me -- Epic had informed Google that Fortnite

1 was going to be launched off the Play Store; right?

2 **A.** That part I don't know off the top of my head; but if
3 that's what you say, I believe you.

4 **Q.** Okay. Thank you. I appreciate that.

5 So this e-mail from Mr. Murphy, which continues on the
6 next page, which is really where I'm going to focus -- so if we
7 could go to the next page, please.

8 There's a set of terms here that Mr. Murphy is sending
9 around. Do you see those?

10 **A.** Terms?

11 **Q.** On page 3.

12 **A.** I'm looking for the word "terms."

13 **Q.** Well, the word "terms" isn't there, but these are a set of
14 terms and other information that's being presented to the
15 Business Council for its review; correct?

16 **A.** It looks like it, yeah.

17 **Q.** Okay. And you were listed as the top deal representative
18 for this deal. Do you see that?

19 **A.** I do see that, yep.

20 **Q.** And if we look down a little bit to the section labeled
21 "Partner Statement About Ecosystem."

22 If we could go down there. Great.

23 This proposal to the Business Council identified Epic's
24 decision to distribute Fortnite through Epic's own website as a
25 threat to the Google Play Store's broader business model. Do

1 you see that?

2 **A.** I see that.

3 **Q.** And there was -- at this time there was a concern that was
4 being voiced within Google that if Epic distributed off of the
5 Play Store, other major developers might follow in Epic's
6 footsteps; correct?

7 **A.** Where does it say that?

8 **Q.** I'm asking you if that's true, Mr. Lockheimer.

9 There was a concern being voiced within Google at the time
10 that if Epic distributed Fortnite off of the Play Store, that
11 other major developers might follow in Epic's footsteps;
12 correct?

13 **A.** I think that's right, yeah.

14 **Q.** Okay. And the deal team in this proposal in Exhibit 1385
15 described that as a high risk of contagion. Do you see the
16 reference to high risk of contagion here?

17 **A.** I do.

18 **Q.** And that meant a high risk that other games would seek
19 other distribution channels; correct?

20 **A.** Right. We wanted Play to be the best place to download
21 apps.

22 **Q.** Right. And so there was a risk that if Epic went off the
23 Play Store, that other games would follow and also distribute
24 off the Play Store; correct?

25 **A.** That's what it says there (as read):

1 "High risk that other games seek other distribution
2 channels."

3 Q. Right. And that was referred to within Google as a high
4 risk of contagion; correct?

5 A. Certainly in this e-mail it seems like that's how it was
6 described.

7 Q. And elsewhere within Google it was also referred to as
8 contagion, correct, outside of this e-mail?

9 A. I don't know. I mean...

10 Q. Okay. The proposal to the Business Council stated that if
11 Epic launched Fortnite off of Google Play, Google stood to lose
12 \$130 million in revenue directly from in-app purchases on
13 Fortnite.

14 Maybe the best place to look is the best place, but this
15 one works fine too. We can leave it here.

16 A. This is on page 1?

17 Q. Correct.

18 A. Okay.

19 Q. That was the estimate that was made internally at Google
20 at the time, \$130 million in direct revenue at risk; correct?

21 A. It says (as read):

22 "For 130 million we calculated the direct revenue
23 forgone if Fortnite is not on the Play as follows."

24 And there's a bunch of stuff there.

25 Q. Yes. So there was \$130 million that was perceived to be

1 at risk if Fortnite was launched off Play; correct?

2 **A.** I'd have to read a little bit more to understand the
3 context.

4 **Q.** So you don't remember; is that your testimony?

5 **A.** I don't. This e-mail was from 2018.

6 **Q.** Okay. Well, that makes things easier.

7 All right. Well, let's go back to the third page here
8 where the proposal is.

9 Do you remember that the estimated value, the incremental
10 cost to Google right at the top, was projected to be
11 \$147 million for this proposal to Epic?

12 **A.** I don't remember.

13 **Q.** Do you remember that -- do you have any reason to doubt
14 that that's actually what was being proposed to the Business
15 Council here on this document?

16 **A.** No. I believe this e-mail.

17 **Q.** Okay. And what Google was proposing was to spend
18 \$147 million in incremental costs to protect against
19 \$130 million in direct revenue loss from Epic; correct?

20 **A.** Say that again. You're jumping around a bit.

21 **Q.** It's \$147 million in incremental costs; correct? That's
22 here?

23 **A.** According to this part.

24 **Q.** Right. And then just go a little further down that page
25 where it says partner statement about ecosystem, which we

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1 looked at before. It's right on the screen, sir (as read):

2 "Threatening Play revenue \$130 million directly."

3 Do you see that?

4 **A.** Directly, yeah. 130 million directly, yeah.

5 **Q.** Exactly. So if you looked only at the direct costs or the
6 direct threatened revenue, Google was proposing to spend
7 \$147 million to protect a potential loss of \$130 million if you
8 looked only at the direct revenue; correct?

9 **A.** I guess if you look at just these two lines that you're
10 highlighting, I guess that's how you could say it. It sounds
11 like we were offering them a really great deal.

12 **Q.** Well, what you were doing was actually you were proposing
13 the \$147 million in incremental costs to the Business Council
14 because Google perceived that the risk of contagion would be
15 substantially more expensive and was seeking to protect against
16 that as well; correct?

17 **A.** Maybe. I'm sure there are other considerations as well.
18 I mean, it's a long four-page e-mail.

19 **Q.** Mr. Lockheimer, let me ask you to take a look at the
20 second page of the e-mail, which comes from somebody named
21 Shafiq Ahmed. Do you remember he was one of the people on the
22 Play finance team?

23 **A.** I do remember Shafiq, yes.

24 **Q.** All right. If we can pull up his e-mail there.

25 At the very top under number two, the very last sentence,

1 he says (as read):

2 "The reason to be willing to provide value greater
3 than expected rev share is to hedge against the further
4 downside risk of contagion to the next likely set of
5 developers."

6 Correct?

7 **A.** He wrote that and he also said, "...but not breach current
8 economics."

9 **Q.** He did, right.

10 And Google's counsel approved this proposal -- Business
11 Council approved this proposal; correct?

12 **A.** I believe so.

13 **Q.** And Google made this offer to Epic; correct?

14 **A.** I would think so, yes.

15 **Q.** And Epic turned it down; right?

16 **A.** I believe so.

17 **Q.** All right. Now, when Epic did ultimately launch Fortnite
18 on Android outside of the Google Play Store, there was a team
19 of people within Google who were examining Fortnite for bugs
20 and vulnerabilities. Do you remember that?

21 **A.** Well, I remember there was a security incident.

22 **Q.** That's not my question. We'll get there.

23 My question is: Do you remember that there was a team of
24 people that was put together at Google to examine the Fortnite
25 installer for bugs and vulnerabilities?

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1 **A.** There was a team of people who helped Epic with a security
2 incident, yes.

3 **Q.** Again, not my question.

4 Do you remember a team of people was put together to
5 examine it for bugs and vulnerabilities?

6 **A.** Yes.

7 **Q.** Okay. And this was the Fortnite Task Force. Do you
8 remember that phrase?

9 **A.** I don't.

10 **Q.** Now, as you say, Google did identify a security
11 vulnerability in the version of Fortnite accessible from the
12 Samsung Galaxy Store; right?

13 **A.** I don't remember the details. All I remember is there was
14 a security incident.

15 **Q.** So you don't remember that it was only on the Samsung
16 Galaxy Store but not on the Epic website? You don't remember
17 one way or the other?

18 **A.** I do not.

19 **Q.** Okay. And you also don't know whether this vulnerability
20 you're talking about affected a single Fortnite user; correct?

21 **A.** I don't know how many users it impacted.

22 **Q.** So you don't know one way or the other?

23 **A.** Correct.

24 **Q.** Okay. But you do know that Google leaked the Fortnite
25 installer bug to the media; correct?

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1 **A.** I wouldn't say "leaked."

2 **Q.** Well, it was Google's plan of action to tip off the press
3 about the bug; correct?

4 **A.** For security incidents, we generally have a disclosure
5 policy.

6 **Q.** Was it Google's plan to tip off the press about this bug?
7 I'm not talking about your usual practices. Tipping off the
8 press about this bug, that was your plan; right?

9 **A.** There was a security incident in Epic's code.

10 **Q.** Mr. Lockheimer, I didn't ask where the code was. I didn't
11 ask whose it was.

12 It was Google's plan to tip off the press about this bug;
13 correct?

14 **A.** I guess I'm just objecting to when you say "plan," it
15 makes it sound like we planned this whole thing.

16 **THE COURT:** Listen to the question and then answer it.
17 The answer is yes, no, or I don't know. No variations on that.
18 Don't argue, please.

19 **THE WITNESS:** Okay. Understood.

20 **THE COURT:** Repeat the question so we have a clean
21 record.

22 **MR. BORNSTEIN:** Thank you, Your Honor.

23 **BY MR. BORNSTEIN:**

24 **Q.** It was Google's plan of action to tip off the press about
25 this bug; correct, Mr. Lockheimer?

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1 **A.** No.

2 **Q.** All right. Well, let's look at Exhibit 1385, please. I'm
3 sorry. 1386. I apologize.

4 **A.** Okay.

5 **Q.** 1386.

6 And Exhibit 1386 is an e-mail string in which you
7 participated in August of 2018?

8 **A.** Say that one more time.

9 **Q.** Exhibit 1386 is an e-mail string in which you participated
10 in August of 2018; correct?

11 **A.** Yes, correct.

12 **Q.** Great.

13 **MR. BORNSTEIN:** Your Honor, I'd move the admission of
14 Exhibit 1386.

15 **MR. POMERANTZ:** No objection, Your Honor.

16 **THE COURT:** It's admitted.

17 (Trial Exhibit 1386 received in evidence.)

18 **BY MR. BORNSTEIN:**

19 **Q.** And I'd ask you to look, Mr. Lockheimer, at page 8.
20 There's an e-mail from someone named Shannon Newberry on
21 August 23. Do you see that?

22 **A.** One second. Sorry.

23 (Witness examines document.) Shannon Newberry... Yes, I
24 see Shannon's e-mail.

25 **Q.** Right. And she's copied you in; correct?

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1 A. She looped me in, yes.

2 Q. Right. And she says (as read):

3 "Okay. Plan of action and next steps on the Fortnite
4 security bug."

5 Do you see that?

6 A. I do.

7 Q. And item number three in the plan of action that she
8 reports to you is (as read):

9 "We tip off the press about the bug."

10 Correct?

11 A. I see that.

12 Q. And you supported the idea of tipping off the press about
13 the bug, am I right?

14 A. Well, I wanted to make sure people were aware of the
15 security incident.

16 Q. Mr. Lockheimer --

17 A. Yes.

18 Q. -- you supported the idea of tipping off the press about
19 the bug; correct?

20 A. It was a security incident so, yes.

21 Q. Right. And you have ordinary procedures for releasing
22 information about security incidents, correct, at Google?

23 A. For -- there are different processes but, yes.

24 Q. Right. Tipping off the press about the bug is not one of
25 the typical procedures. You have a separate channel for

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1 security incidents; right?

2 **A.** I think this was already public at that point, though.

3 **Q.** Okay. But you don't know. You're now thinking and
4 looking at the document and trying to rationalize; correct?

5 **A.** I am looking at the document.

6 **Q.** Yes, right. So I'll ask my question again.

7 There is a process, Mr. Lockheimer, at Google for
8 releasing security information, and it does not include this
9 special plan of action for tipping off the press about the bug;
10 correct.

11 **A.** This was the first time we dealt with an issue with Epic
12 so there was no --

13 **THE COURT:** Listen to the question and answer it. I
14 don't want to have to tell you again.

15 Take it from the top, please, Bornstein.

16 **MR. BORNSTEIN:** Yes, Your Honor.

17 **BY MR. BORNSTEIN:**

18 **Q.** There is a process at Google for releasing security
19 information and it does not include this special plan of action
20 for tipping off the press about the bug; am I correct?

21 **A.** I suppose so.

22 **Q.** Okay. And the Google team actually did go ahead and share
23 the bug with a media outlet called Android Central; is that
24 right?

25 **A.** I'd have to look at the e-mail to -- is it okay if I look

1 at the e-mail to check?

2 Q. I'll look at it with you.

3 A. Okay.

4 Q. Yes. Why don't we turn to page 7.

5 A. Okay.

6 Q. You'll go the other way.

7 And there is an e-mail there at the top again from
8 Ms. Newberry.

9 By the way, she's a PR person at Google; right?

10 A. Shannon Newberry was a PR person, yes.

11 Q. A PR person working on the security.

12 And she says (as read):

13 "We shared the bug with Android Central and worked
14 with them today to shape a piece."

15 Do you see that?

16 A. I do.

17 Q. All right. And your response on top of that on August 24,
18 2018, under the thing with your name and the capital letters,
19 you say (as read):

20 "Well done. Thank you."

21 Correct?

22 A. Seems like it.

23 Q. All right. Let's talk about one more issue before I let
24 you go.

25 A. Okay.

1 Q. Apps that are distributed on the Google Play Store are
2 required to use Google Play Billing to handle in-app purchases
3 of digital content; correct?

4 A. Correct.

5 Q. Not all developers like that policy; is that fair?

6 A. I think it's fair.

7 Q. All right. And you are aware that there are some
8 developers who have objections to this policy for reasons other
9 than the 30 or 15 percent fee that's associated with

10 Google Play Billing; right?

11 A. I think so.

12 Q. Right. There are developers who don't like the features
13 available, for example?

14 A. Features available where?

15 Q. On Google Play Billing.

16 A. I see. Maybe.

17 Q. Right. But you're aware of at least one, right, that
18 you've dealt with in the past? Am I right?

19 A. I think you're referring to Epic.

20 Q. No. I'm referring to YouTube. You've dealt with people
21 at YouTube --

22 A. Yes.

23 Q. -- who were not happy with the features available at
24 Google Play Billing. Do you recall that?

25 A. Sure.

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1 Q. All right. And YouTube, it's a part of Google obviously;
2 right?

3 A. Yes.

4 Q. Okay. And for many years, YouTube was not required to use
5 Google Play Billing for in-app purchases of digital content;
6 right?

7 A. They had a road -- they were required, but they hadn't
8 done it yet.

9 Q. So for years they did not do it, and Google didn't stop
10 them; right?

11 A. We were working with them to get them there.

12 Q. Right. For a long time, Mr. Lockheimer, YouTube used a
13 billing platform other than Google Play Billing; am I right?

14 A. I think that's right.

15 Q. Okay. For eight or nine years; right?

16 A. I don't know.

17 Q. Okay. And when it came time that YouTube was forced to
18 change and implement Google Play Billing, you got a complaint
19 from YouTube's senior leadership; correct?

20 A. Sure.

21 Q. All right. And that's -- there's a person named -- and
22 I'm going to butcher this one, I hope not, but I'm going to
23 try -- Susan Wojcicki?

24 A. I've heard it multiple ways too. Yeah, Susan Wojcicki I
25 think.

1 Q. I will take it your way since you're more likely to be
2 right than me.

3 Susan Wojcicki, she was the head of YouTube?

4 A. At the time, yes.

5 Q. And she complained to you directly and personally about
6 the requirement that YouTube switch over to Google Play
7 Billing, did she not?

8 A. She did.

9 Q. All right. Let's take a look at your communication with
10 her. It's Exhibit 1391.

11 A. Okay.

12 Q. And this is, in fact, a chat between you and Ms. Wojcicki
13 about Google Play Billing and YouTube; correct?

14 A. It was a chat between Susan and I, yes.

15 Q. About Google Play Billing; correct? You can see it in the
16 very first line of the chat.

17 A. Sure. It's a long -- I don't know if we talked about
18 other things, but certainly it seems like we talked about Play
19 Billing.

20 Q. It's in the very first line of the chat; right?

21 A. Yeah.

22 Q. Okay.

23 MR. BORNSTEIN: Your Honor, I'd move the admission of
24 Exhibit 1391.

25 MR. POMERANTZ: No objection, Your Honor.

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1 **THE COURT:** It's admitted.

2 (Trial Exhibit 1391 received in evidence.)

3 **MR. BORNSTEIN:** So let's get that on the screen,
4 please.

5 **BY MR. BORNSTEIN:**

6 **Q.** And as I said, in the very beginning Ms. Wojcicki asks (as
7 read):

8 "If you have a minute, it would be good to talk about
9 Play Billing."

10 Correct?

11 **A.** I see that.

12 **Q.** And her team was very upset about YouTube having to switch
13 over to Google Play Billing from the system they had been
14 using; correct?

15 **A.** She said, yeah, "My team was really upset."

16 **Q.** And what they're upset about was the requirement that
17 YouTube switch from what they had been using to Google Play
18 Billing. That's what has her upset; right?

19 **A.** Well, she said she felt the process was subverted.

20 **Q.** I'm asking you, Mr. Lockheimer: Do you remember this,
21 about what she was upset about, or not?

22 **A.** In general, she didn't -- she had other things she wanted
23 her team to work on.

24 **Q.** Ms. Wojcicki was upset about the requirement that YouTube
25 was being forced to use Google Play Billing? Yes or no or you

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1 don't remember.

2 **A.** I suppose, yes.

3 **Q.** Okay. And if you look down a little bit, she tells you --
4 we should have this on the screen for everyone's assistance,
5 please.

6 **TECH PERSONNEL:** Your monitor is down.

7 **MR. BORNSTEIN:** Is it just mine? That's fine. I'll
8 use this one over here.

9 **BY MR. BORNSTEIN:**

10 **Q.** So if we look down a little bit, she says to you,
11 Mr. Lockheimer (as read):

12 "It's damaging for our business against our
13 competitors."

14 Do you see that?

15 **A.** I do.

16 **Q.** And she's telling you that having to use Google Play
17 Billing is bad for YouTube; right?

18 **A.** It seems like it for her business against her competitors.

19 **Q.** Correct. Bad for YouTube.

20 And she says a little further down that (as read):

21 "It's obviously a big change and our team feels it
22 will hurt us competitively to have to use Google Play
23 Billing."

24 Correct?

25 **A.** She says that, yeah.

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1 Q. Right. She says then -- at the top of the next page she
2 says (as read):

3 "It's a huge change for us" --

4 Sorry. The top of page 3 (as read):

5 "It's a huge change for us."

6 Right?

7 A. I don't see it, but I believe you, yeah.

8 Q. All right. Well, you respond to her and you say on
9 page 3, Mr. Lockheimer, we'll have it on the screen again (as
10 read):

11 "It's a huge change for us too."

12 Right?

13 A. "It's a huge change for us too," yes, I wrote that.

14 Q. And you told her that your team was not driving this but
15 that your team was forced into it; right?

16 A. I wrote -- it's hard to read because of the weird
17 asterisks and things like that, but, yeah, "We are forced into
18 this," I wrote that.

19 Q. Right. And then a little further down the page
20 Ms. Wojcicki tells you some of the problems that this is going
21 to cause her. She says (as read):

22 "We will obviously need extra ENG."

23 Which I assume that's engineers or engineering resources?

24 A. Engineering, yeah, I think that's right.

25 Q. (as read):

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1 "We will obviously need extra engineers from Sundar
2 for this since we can't do with our HC."

3 Meaning headcount?

4 **A.** Headcount.

5 **Q.** Right. So she's asking -- or telling you that YouTube is
6 going to need more engineers to make this switch from what they
7 were doing to Google Play Billing; correct?

8 **A.** Right.

9 **Q.** And she also tells you that it's going to make it hard for
10 YouTube to innovate on billing; correct?

11 Again, it's on the screen.

12 **A.** (as read):

13 "We need to know how we can innovate on billing."

14 She says she needs to know how to innovate on billing.

15 **Q.** Right. And she's worried about not being able to innovate
16 and instead, as she puts it, being stuck with a lot of larger
17 prioritization decisions that might be right for Play Billing
18 but bad for YouTube; right? That's what she told you?

19 **A.** Uh-huh. Yes. Sorry.

20 **Q.** So even YouTube, a Google Play Billing -- excuse me -- a
21 Google-owned company, objected to being forced to use
22 Google Play Billing because it would hurt YouTube
23 competitively; correct?

24 **A.** I suppose so, yeah. She didn't want to do it.

25 **Q.** And the only reason that we have this chat between you and

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1 Ms. Wojcicki is because someone had history on and it was
2 saved; correct?

3 **A.** I would think so. I don't know the logistics of how that
4 works but, sure.

5 **Q.** All right. Well, that person wasn't you. You didn't have
6 history on; correct?

7 **A.** I don't know.

8 **Q.** Okay. Are you aware that your lawyers have represented to
9 us in a sworn interrogatory response that you don't recall ever
10 having taken any steps to preserve even a single chat in any
11 manner, including by turning history on, for the entire period
12 in which your documents were collected in this matter?

13 **A.** I don't know what my lawyer said. I wasn't there for
14 that.

15 **Q.** Okay. Are you aware that in this case we have received
16 just two chats from you for the period after the litigation was
17 filed?

18 **A.** I didn't know that.

19 **Q.** All right. Thank you.

20 **MR. BORNSTEIN:** I pass the witness.

21 **THE COURT:** Okay.

22 **MR. POMERANTZ:** Your Honor, may I proceed?

23 **THE COURT:** Yes.

24 \\\

25 \\\

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CROSS-EXAMINATION

BY MR. POMERANTZ:

Q. Good afternoon, Mr. Lockheimer.

A. Hello.

Q. You were asked some questions about the Samsung Galaxy Store and in particular about an e-mail from 2014 between you and people over at Samsung. Do you recall that?

A. I do.

Q. Can we put that back on the screen?

And this is the one that's rather difficult to read, but I just want to ask you a couple follow-up questions.

Was Samsung free to open up an app store if that's what it wanted to do?

A. Absolutely.

Q. And Samsung did so; correct?

A. They continue to, yeah.

Q. And this e-mail from Samsung says that Samsung was free to differentiate its app store. Is it your understanding that Samsung is free to differentiate its app store?

A. Absolutely.

Q. This e-mail says that at that time Samsung only was going to have a few hundred apps in its store. Do you recall that the e-mail said that?

A. Yeah. Something like that, yep.

Q. Are you aware that today Samsung has a lot more than a few

1 hundred apps in its store?

2 **A.** I don't know the exact number but, yes, it's a lot more
3 than a few hundred.

4 **Q.** And from 2014 to today, has the Samsung Galaxy Store been
5 free to compete?

6 **A.** Yes.

7 **Q.** All right. Let me come back a little bit to your
8 background.

9 **A.** Okay.

10 **Q.** You are the head of the platforms and ecosystems
11 organization; correct?

12 **A.** That's right.

13 **Q.** Could you identify for the jury what particular products
14 are covered in that organization?

15 **A.** Sure. So it's Android -- and when I say "Android," it
16 also includes TVs and watches and cars and things like that --
17 Play Store, Chrome OS, and Chrome Browser, and also Google
18 Photos.

19 **Q.** And do you have any responsibility for Google Search?

20 **A.** I do not.

21 **Q.** How many people are you responsible for? How many people
22 report up to you directly or indirectly in platforms and
23 ecosystems?

24 **A.** About 12,000.

25 **Q.** And what level of engagement do you have on a day-to-day

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1 basis with Play and Android?

2 **A.** On a day-to-days basis, I mean, it depends on the day, but
3 they're important products; but, of course, I have a lot of
4 other important products as well, so I kind of cycle my time
5 through all the products.

6 **Q.** All right. Let's go back a little further.

7 Where did you enroll in college?

8 **A.** I went to Rice University, which is in Houston, Texas.

9 **Q.** And while you were there, did you become interested in
10 computers?

11 **A.** I did.

12 **Q.** Did you finish college?

13 **A.** I did not.

14 **Q.** How long did you stay at Rice?

15 **A.** About two months.

16 **Q.** And then what did you do?

17 **A.** I went -- I grew up in Japan so I moved back to Japan, and
18 I -- at Rice I discovered the computer lab, and that's how I
19 got interested in computers. So when I went back to Japan, I
20 started teaching myself how to program.

21 **Q.** And at some point you moved back to the United States;
22 correct?

23 **A.** That's right.

24 **Q.** What led you back to the United States?

25 **A.** I had done a number of things in open source -- this is in

1 the late '90s -- mid-'90s I guess -- and a company in Menlo
2 Park found me and said, "You should come work for us." So I
3 moved here for that.

4 Q. And then how did you end up at Google?

5 A. My first boss at that start-up that I moved to in Menlo
6 Park, he eventually left and eventually introduced me to Andy
7 Rubin who eventually came to Google.

8 Q. And what year did you join Google?

9 A. 2006.

10 Q. And did you join the Android team?

11 A. I did.

12 Q. Now, in 2006, that was about two years before the first
13 Android phone was available on the market; correct?

14 A. October of 2008. So, yeah, a little over two years.

15 Q. When you first joined the Android team in 2006, did you
16 understand what the mission of Android was?

17 A. I think so, yeah.

18 Q. What was that mission?

19 A. Our goal was to build an open-source operating system for
20 mobile phones, build a smartphone, which in 2023 it sounds kind
21 of obvious, but back in 2006 most people hadn't heard of or
22 used a smartphone before, so I was really excited to go build
23 this.

24 Q. And let's now move forward to the present day.

25 Android competes with Apple; correct?

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1 A. Yes.

2 Q. How's Android doing in its competition with Apple?

3 A. Well, it depends on the country. IOS and Android are
4 global, but in the U.S. we're struggling at the moment.

5 Q. So if I could ask you to look at Exhibit 5932 in your
6 binder.

7 A. 5932?

8 Q. In your small binder.

9 A. Okay.

10 Q. Do you have that in front of you?

11 A. I do.

12 Q. What is this document?

13 A. Pardon?

14 Q. What is this document?

15 A. Oh, what is this document? It is a -- it looks like -- I
16 recognize the logo there. It's from our team within my team
17 talking about this feature called Better Together.

18 Q. And did your team create this document?

19 A. I think so.

20 Q. And do you believe you've seen these slides before?

21 A. Yeah.

22 MR. POMERANTZ: Your Honor, I would move to admit
23 Exhibit 5932.

24 MR. BORNSTEIN: No objection, Your Honor.

25 THE COURT: It's admitted.

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(Trial Exhibit 5932 received in evidence.)

BY MR. POMERANTZ:

Q. All right. Mr. Lockheimer, could you turn to page 12?

A. 12.

(Witness examines document.) Okay.

Q. What is this slide showing?

A. Well, it says "Android is losing share." It's showing what our share situation is in the U.S., which is the top row, and then in Europe, which is the bottom row.

Q. All right. And if you could just explain to the jury what is happening in the United States on this slide.

A. Sure. So you see on the top row -- I'm just going to focus on the top row since you said is the U.S. -- on the left side is it's Q2 of 2019; on the right side is Q2 of 2020. So a year has past.

On the left it shows that IOS was at 60 percent market share, meaning 68 of 100 people in the U.S. are using iPhones.

In a year later, a whole year later, that is now 79 out of 100 people using iPhones in the U.S.

Q. I just want to make sure it's clear. You said 68 percent in 2019; correct?

A. Yes.

Q. So an 11 percent shift in that period?

A. That's right.

1 Q. What's happened since 2020? How has that share moved?

2 A. This kind of trend has continued.

3 Q. All right. Now, is Google competing to attract people to
4 Android who are buying their first smartphone?

5 A. Sure.

6 Q. And is Google also competing to try to get people to
7 switch back from IOS back to Android?

8 A. Sure. Or for the first time, switching for the first time
9 from IOS to Android too.

10 Q. And so what's happening -- let's start with the people who
11 are buying their first smartphone. They tend to be younger
12 people; correct?

13 A. Yes.

14 Q. What's happening with those people in the last -- you
15 know, in recent years in terms of their choice between the
16 iPhone and an Android phone?

17 A. They're predominantly picking iPhones.

18 Q. And what about the switching? Is there more people who
19 already have a phone who are switching from iPhone to Android
20 or from Android to the iPhone?

21 A. There are more people switching from Android to iPhone.

22 Q. All right. Now, if -- I think you were asked a question
23 about do people switch phones or get a new phone every
24 six months. Do you recall that?

25 A. I do.

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1 Q. I think that was your true-or-false test.

2 A. Yes, I do remember that.

3 Q. Okay. But people do get a new phone from time to time;
4 correct?

5 A. Yes.

6 Q. Approximately how often do you --

7 A. Every two, three years, something like that.

8 Q. And when they do change, do they have a choice whether to
9 stay with the phone that they have or to switch to the other
10 phone?

11 A. They have a choice.

12 Q. So if you're an Android user, you can get another Android
13 phone or you can get an iPhone; correct?

14 A. Correct.

15 Q. And the same in reverse?

16 A. That's right.

17 Q. And is that part of what the competition is between
18 Android and Apple?

19 A. Definitely a part of it, yeah.

20 Q. So if 4 percent -- anywhere from 4 to 12 percent of
21 Android users in a given year are switching from Android to
22 the iPhone, does that matter to Google?

23 A. A lot, yes.

24 Q. Why?

25 A. Well, that's that many -- you know, every person who

1 switches from Android to IOS means there's one less person on
2 the Android side and one more on the iPhone. You know,
3 4 percent, 12 percent those are big percentage points. We saw
4 a slide with big percentage points too. That's -- that's
5 concerning.

6 **Q.** Now, in light of this shift from Android to Apple, what is
7 Android doing to innovate and differentiate itself from the
8 iPhone?

9 **A.** Well, a number of things. You know, we need to nail the
10 basics. We want to make sure that the phone works well.
11 Battery life is good. You can make phone calls. You can use
12 the browser. You know, all the things that people expect.
13 Download apps.

14 And we also want to make cool devices that people sort of
15 are attracted to. So really focusing on the end user and
16 developers on attracting them.

17 **Q.** And is one of those cool new devices the foldable phone?

18 **A.** Sure.

19 **Q.** And did we ask you to bring an example of the foldable
20 phone so the jury can see what we're talking about?

21 **A.** I also use one, so I have it with me anyway; but, yes, I
22 did bring some.

23 **Q.** Can you take it out and show the jury an example of a
24 foldable phone?

25 **A.** I brought two. Here's my phone -- one of my phones

1 (indicating). This is called a Samsung Flip and it literally
2 folds. You know, it's glass and flips, and then there's a
3 screen on the outside as well.

4 **Q.** And the other phone?

5 **A.** The other phone, this one happens to be a Pixel. It's
6 called the Pixel Fold. So this one folds this way
7 (indicating). So rather than flipping, it folds more like a
8 book. There's a screen on the outside too.

9 **Q.** And can you give us an example of, like, how people might
10 use that phone in a way that might differentiate it from the
11 iPhone?

12 **A.** Yeah, I can give you a couple of examples. On this
13 folding phone, here it's almost like you have a regular phone.
14 You can use it on the outside just like any other phone; but
15 then when you open it, it becomes a tablet, like a mini tablet,
16 that you can carry with you.

17 So, for instance, when I travel, I watch my entertainment
18 on this on the plane or whatever, and I close it and I just use
19 it as a regular phone. You know, it's great.

20 On a device like this, it also works on the other one, you
21 can imagine video calls. You know, maybe you're doing a Zoom
22 or something like that. And I'm sure some people have done it,
23 you know, where they're trying to do this or trying to do that.
24 Well, here you can just do it like that (indicating).

25 So if Zoom call is happening here (indicating) and then

1 the controls are down here (indicating), and it's great and
2 it's hands free.

3 **Q.** All right. You can put those phones away. You can take
4 them back home with you.

5 **A.** Okay. Thank you.

6 **Q.** Let's talk about competition for developers.

7 How does Play compete with the Apple App Store for
8 attention or support of developers?

9 **A.** A number of ways. First and foremost, I don't know if
10 it's foremost, but one of the ways definitely is we need a
11 large audience. You know, if you're a developer, you care
12 about how many people you can reach, so we want to make sure
13 there's as many Android users, Play users, out there as
14 possible. That's their audience.

15 Another way may be around monetization. A lot of
16 developers are in a business. You know, it's not a nonprofit.
17 They're trying to make money. So how do we help them make
18 money? Things like that.

19 **Q.** Now, sometimes a developer will choose to launch its app
20 only on one operating system and not the other; correct?

21 **A.** That does happen sometimes, yes.

22 **Q.** Why would a developer choose to launch on just one and not
23 the other?

24 **A.** Yeah, you know, for many developers, especially if you're
25 a start-up, you have a limited set of resources. You have a

1 limited number of engineers. You have a limited number --
2 amount of money in the bank maybe, you know, and you have to
3 make decisions as to where you're going to focus.

4 And so if a start-up, for instance, is focused on the
5 U.S. -- and we just talked about the market share situation in
6 the U.S. -- they may make a very rational decision that says:
7 There are more iPhone users in the U.S. so I'm going to focus
8 on iPhone first or maybe iPhone only because that's where
9 most of my audience is going to be.

10 **Q.** And what does Play do to try to stop that from happening?

11 **A.** A number of things. Of course, we try our best to make
12 sure there's a big audience for Play as well, but those things
13 don't happen overnight.

14 Another thing we do is we're out there talking to
15 developers trying to scout out developers who may build the
16 next cool thing and make sure that they care about Android,
17 they care about Play. So, you know, doing some evangelism,
18 things like that.

19 And also making our product really good. You know making
20 sure that the developers have all the right tools to make it
21 really easy for them to develop on Android.

22 **Q.** Can you think of a specific example of an app that
23 launched first on Apple, on IOS, and it caused some frustration
24 for Android users?

25 **A.** Sure.

1 Q. Can you give us an example?

2 A. Yeah, yeah. It was Clubhouse.

3 Q. And tell us -- if you can tell the jury a little bit about
4 Clubhouse.

5 A. Sure. Clubhouse was an app, this was maybe two, three
6 years ago. A lot of people in the tech industry were talking
7 about it. You can think of it as almost like Twitter but for
8 voice. So rather than typing messages, you're leaving voice
9 messages, but it's kind of like Twitter. And that was only
10 available on iPhone for a long time.

11 Q. Did you ever hear from any of your Android partners about
12 the problems with Clubhouse launching on IOS?

13 A. Sure.

14 Q. What did you hear?

15 A. Well, Samsung, for instance, contacted us. Clubhouse was
16 pretty popular in the U.S. where Samsung is focused on selling
17 more devices but also in their home country in Korea, so they
18 contacted us saying "What's going on? Why isn't there an
19 Android version of Clubhouse?" You know, and we discussed
20 that.

21 Q. Now I'm going to switch from whether the app is available
22 on one store versus another to the quality of the app on Play
23 versus the quality of the app in the Apple App Store. Okay?

24 A. Okay.

25 Q. Have you had discussions with your team about the

1 difference in app quality -- certain app quality and features
2 between the version on Play and the version on the Apple App
3 Store?

4 **A.** Of course.

5 **Q.** All right. Could you take a look in your binder at
6 Exhibit 5622?

7 **A.** 5622?

8 **Q.** Yes, please.

9 **A.** (Witness examines document.) Okay.

10 **Q.** And what is this document?

11 **A.** It looks like a presentation talking about closing the app
12 gap.

13 **Q.** And is this a document that you and your team rely upon to
14 help make business decisions?

15 **A.** Yeah, this and others like this too.

16 **Q.** And do you rely on decks like this to make decisions about
17 how to best compete for developers?

18 **A.** Sure.

19 **MR. POMERANTZ:** Your Honor, I would move into evidence
20 Exhibit 5622.

21 **MR. BORNSTEIN:** I object, Your Honor. There's no
22 foundation the witness saw this particular document of which
23 he's not a custodian.

24 **THE COURT:** Try a foundation, please.

25 **MR. POMERANTZ:** Sure.

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1 **BY MR. POMERANTZ:**

2 **Q.** Mr. Lockheimer, have you seen this document before?

3 **A.** Can I --

4 **Q.** Take a look through it and tell me whether you have seen
5 this and worked, you know, on this deck with your team.

6 **A.** (Witness examines document.) I think I've seen it, yeah.

7 **Q.** And is this a deck that you have relied on in your
8 discussions in brainstorming with your team?

9 **A.** Brainstorming with the team, sure.

10 **MR. POMERANTZ:** Your Honor, I would move to admit this
11 into evidence.

12 **THE COURT:** When did this happen? When did you see
13 this and when did you rely on it?

14 **THE WITNESS:** I don't remember the exact date, but
15 this is talking about topics that have been important to us for
16 the past, I would say, three, four years.

17 **THE COURT:** No, the document. When did you see this
18 document and when did you rely on this document?

19 **THE WITNESS:** This specific document, like when did I
20 see it?

21 **THE COURT:** That's the only one in front of you, yes.

22 **THE WITNESS:** I don't remember the exact date of when
23 I saw it.

24 **THE COURT:** The objection is sustained.

25 \\\

LOCKHEIMER - CROSS / POMERANTZ

1 **BY MR. POMERANTZ:**

2 **Q.** Mr. Lockheimer, are you aware that people have complained
3 about the quality of apps like Instagram and Snapchat on Play
4 as compared to those same apps and how they appear through the
5 Apple App Store?

6 **A.** Yes.

7 **Q.** And what have you done to try to address that problem?

8 **A.** A number of things. First and foremost, reaching out to
9 Instagram and Snapchat to see how we can help.

10 **Q.** What has happened with that?

11 **A.** What we discovered was for Instagram and Snapchat, there
12 was actually a lack of awareness. You know, a lot of the
13 decision-makers for Instagram and Snapchat are in the U.S.,
14 they're using iPhones, and they didn't realize that when
15 you're using an Android device, sometimes when you take a
16 picture and upload it, it's just lower quality than a
17 comparable iPhone. So we educated them on that, and they
18 were surprised and we came up with a plan together on how to
19 improve it.

20 **Q.** And have those steps been taken?

21 **A.** We're not done yet. It's a multiyear process, but they're
22 working on it; we're working on it.

23 **Q.** All right. Let me change subjects now to competition
24 between Apple and Android on security.

25 What do apps have to do with security of a smartphone?

1 **A.** Apps in terms of security of the smartphone, well, it's
2 pretty important actually. You know, if you think about, let's
3 say, a banking application, if you know that this app is from
4 your bank, then you're going trust it with your information and
5 trust it with whatever password you're putting into it or
6 whatever; but if the app is malicious, it looks like you're
7 banking app but it's actually someone else pretending to be
8 your bank, that would be really bad. You would be giving your
9 credentials, your banking information, to someone bad.

10 **Q.** Now, the jury has heard testimony earlier in this case
11 about something called sideloading. You're familiar with
12 sideloading, aren't you?

13 **A.** I am.

14 **Q.** The Android allows sideloading; correct?

15 **A.** It does.

16 **Q.** And the iPhone does not; correct?

17 **A.** It does not.

18 **Q.** Do Android phones show the user a consent screen, a
19 notification or warning when the user goes to sideload an app
20 or an app store?

21 **A.** Sure.

22 **Q.** What's the purpose of that consent screen?

23 **A.** Well, we want to make sure end users understand that these
24 apps that they're about -- apps or app that they're about to
25 sideload hasn't gone through the same level of security checks

1 as an app through the Play Store.

2 The Play Store we run, we know what kind of security
3 mechanisms we have in place and how we ensure the
4 appropriateness of these apps. When you sideload, the user has
5 to understand they're taking a risk.

6 **Q.** And have you spoken with some of the Android phone
7 manufacturers about the security of Android phones compared to
8 the security of the iPhone?

9 **A.** Sure.

10 **Q.** Could you look at Exhibit 5666 in your binder?

11 **A.** Okay.

12 (Witness examines document.) Yep.

13 **Q.** And can you -- this is an e-mail exchange that you
14 participated in?

15 **A.** Yes. I was copied on this e-mail.

16 **Q.** And you see down at the bottom of the first page there's
17 an e-mail from somebody named DJ Koh. Do you see that?

18 **A.** I do.

19 **Q.** And that's somebody from Samsung; correct?

20 **A.** Correct.

21 **MR. POMERANTZ:** Your Honor, I move Exhibit 5666 into
22 evidence.

23 **MR. BORNSTEIN:** No objection, Your Honor.

24 **THE COURT:** It is admitted.

25 (Trial Exhibit 5666 received in evidence.)

1 **BY MR. POMERANTZ:**

2 **Q.** All right. So could you -- who is DJ Koh?

3 **A.** He was an executive at Samsung.

4 **Q.** Head of their mobile handset business?

5 **A.** At one point, yes.

6 **Q.** Okay. And just at a high level, what is Mr. Koh
7 discussing in his e-mail to you?

8 **A.** Well, he talks about -- if you go down a little bit, I
9 don't know if people can see, but there was some sort of
10 security breach on iPhone. So not Android but on iPhone,
11 and he was pointing out that when this breach happened -- in
12 the first paragraph, second sentence I think -- when the breach
13 happened, Apple just deleted these compromised apps from their
14 store, and this blocked the propagation of the compromised
15 apps.

16 And he says it was a simple and effective action, but then
17 he's saying -- lamenting the fact that that same thing cannot
18 be done well on Android due to our allowing of sideloading.

19 **Q.** And so then he goes on in the next one and says -- I'm
20 sorry. I just want to pick up where you are.

21 I think it's the next paragraph (as read):

22 "Since Android has been an open platform and has
23 allowed sideloading for maximum freedom for developers, I
24 believe it has provided good value to attract developers
25 and grow the community faster. However, we also suffer

1 from the consequence of them."

2 Do you see that?

3 **A.** That's what DJ was saying, yes.

4 **Q.** And what did you understand him to be referring to there?

5 **A.** Well, I think he understood that sideloading was an
6 important part of how we thought about developers on the
7 platform; that we believe that there should be more than just
8 the Play Store in terms of distribution mechanisms of apps on
9 Android.

10 But he was also, I think, frustrated that the security
11 incident, which happened on Apple in this case, he was worried,
12 I guess, maybe not frustrated, worried that if such a similar
13 thing happened on Android, could we deal with it as effectively
14 as Apple did.

15 **Q.** All right. And then in the next paragraph he asks you to
16 collaborate to try to come up with a way to ensure that Android
17 could deal with such a situation; correct?

18 **A.** Sure.

19 **Q.** Did you then continue to work with Samsung to address
20 security collaborations?

21 **A.** On an ongoing basis, yes, till this day.

22 **Q.** All right. We can take that down.

23 Has Apple said anything publicly about security challenges
24 that they think the Android phones present?

25 **A.** Sure.

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1 Q. And have you seen a video in which Apple's CEO compares
2 Android sideloading to driving a car without an airbag?

3 A. I have, yes.

4 MR. POMERANTZ: Your Honor, I would like to offer
5 Exhibit 9026, which is that video and play it to the jury.

6 MR. BORNSTEIN: Object, Your Honor. Hearsay.

7 MR. POMERANTZ: Your Honor, we're not offering it for
8 the truth most certainly. We're offering it to show Apple
9 competes.

10 THE COURT: Which video is this?

11 MR. POMERANTZ: It's 9026 and it's a video of
12 Tim Cook, the CEO of Apple, discussing Android phones; and
13 we're offering it not for the truth but to show how Apple
14 competes.

15 THE COURT: 9026?

16 MR. POMERANTZ: Correct.

17 THE COURT: I don't have it, and I can't rule on it if
18 I can't see it.

19 MR. POMERANTZ: Well, we can -- Your Honor, it's a
20 video so we'd have to play it, and I don't know if we can play
21 it without --

22 THE COURT: Well, if we play it, the cat's out of the
23 bag; right? So you can't do that.

24 Why don't you -- how much longer do you have, roughly?

25 MR. POMERANTZ: Not a lot.

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1 **THE COURT:** And how much for cross?

2 **MR. BORNSTEIN:** I doubt there will be very much,
3 Your Honor.

4 **THE COURT:** Well, what do you want me to do? I can't
5 rule on something I haven't seen.

6 **MR. POMERANTZ:** But, Your Honor, we're not -- it's not
7 hearsay because we're not -- I mean, we're not offering it for
8 the truth.

9 **THE COURT:** I can't help you with that, Mr. Pomerantz,
10 until I see it. Okay?

11 So this should have come up earlier. I don't know what
12 you want to do. You can have him come back tomorrow morning.
13 I'll leave it up to you, but I'm not going to allow something
14 to be shown that I have not seen.

15 **MR. POMERANTZ:** All right. We will deal with it in a
16 different way, Your Honor.

17 **BY MR. POMERANTZ:**

18 **Q.** Now, beyond that video of Mr. Cook, have you seen an
19 advertisement from Apple that attempts to persuade users to
20 switch to the iPhone based on security differences between
21 the Play Store and the Apple App Store?

22 **A.** I have.

23 **MR. POMERANTZ:** Your Honor, I would like to show that.
24 It's Exhibit 6695, and I don't believe there's been an
25 objection to that one.

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1 **THE COURT:** 6695?

2 **MR. POMERANTZ:** Yes.

3 **THE COURT:** I don't have a 6695.

4 **MR. POMERANTZ:** It's a video, Your Honor. It's an
5 advertisement.

6 **MR. BORNSTEIN:** I don't have an objection to this one,
7 Your Honor.

8 **THE COURT:** No objection, all right. This one you can
9 do.

10 **MR. POMERANTZ:** All right. So if we could play this
11 video, and then I have a question for you.

12 (Video was played but not reported.)

13 **BY MR. POMERANTZ:**

14 **Q.** All right. Mr. Lockheimer, what is this message from
15 Apple saying?

16 **A.** It's an ad from Apple showing -- basically saying that
17 when you download an app, grab an app from the shelf,
18 effectively downloading an app, you never know what you're
19 going to get on the Android side.

20 I think literally they wrote "Safer on the Apple side."
21 So they're trying to say their app store, their OS is safer
22 than Android and Play.

23 **Q.** And this is part of the competition between the Play Store
24 and the Apple App Store; correct?

25 **A.** Yes. Yeah.

1 Q. Now, how do these kinds of public statements and marketing
2 efforts by Apple affect your efforts to compete?

3 A. Well, it makes us work harder. You know, it's a
4 competition. So any kind of competition, you know, they up the
5 game. You want to do better so it makes us work harder to
6 improve the security and whatever other facets we were talking
7 about. In this case, security.

8 Q. Do you believe that the Apple iPhone is more secure than
9 Android phones?

10 A. I don't.

11 Q. Why not?

12 A. A number of reasons. I'll give one reason now.

13 As I mentioned, Android is open source, and so what that
14 means is much of the code for Android is available for the
15 public to see and review. So you can have security
16 researchers, and we do have security researchers, all over the
17 world independent of Google who look at the code of Android and
18 say, "Okay. I'm going to look for vulnerabilities. I'm going
19 to look for problems," and they point them out to us, disclose
20 them to us. It goes public, and then we fix them.

21 On IOS it's not open source, so the security researchers
22 can't do their job in the same way.

23 Q. All right. Let's switch topics. Let's talk about
24 Fortnite.

25 A. Okay.

1 Q. Counsel asked you some questions about Fortnite launching
2 off Play in 2018. Do you recall that?

3 A. I do remember the question, yeah.

4 Q. And he showed you this e-mail that had a whole bunch of
5 deal terms, a proposal to make to Epic. Do you recall that?

6 A. I do.

7 Q. And you didn't recall the details of that proposal;
8 correct?

9 A. Correct.

10 Q. But what was your reaction when you heard that Epic wanted
11 to launch off of Play, launch someplace else?

12 A. I was disappointed.

13 Q. And why?

14 A. Well, Fortnite is a really popular game -- was and
15 continues to be a really popular game. You know, my son, who
16 was 13 at the time, was addicted to Fortnite. He loved it.
17 You know, he still plays it. And, you know, I wanted to make
18 sure that the product I was working on, you know, also had
19 something -- like something as important as Fortnite in there.
20 Not just for my son, of course, but just using my son as an
21 example of we want the best apps in Play.

22 Q. All right. And you -- there was a discussion about a
23 security flaw that was found at the time that Epic launched off
24 Play. Do you recall that?

25 A. Yes.

1 Q. And you were talking about Google's general practices when
2 a security flaw is discovered.

3 A. Mm-hmm, yes.

4 Q. What is the general practice in terms of public disclosure
5 of the flaw?

6 A. Right. So there's usually a bug database where this --
7 it's a public database of bugs disclosed -- of vulnerabilities
8 that becomes public. So security researchers publish these
9 things publicly.

10 Q. And do you recall that the public disclosure of the flaw
11 was done through Google's standard practices before there was
12 any PR communication?

13 MR. BORNSTEIN: Objection. Leading.

14 THE COURT: Sustained.

15 BY MR. POMERANTZ:

16 Q. What do you recall in terms of the public disclosure of
17 the Fortnite flaw, of the security flaw?

18 A. Well, there was a -- I believe the articles were based on
19 the public bug, the bug that was made public.

20 Q. All right. Let's go back to the service fee. A couple
21 questions there.

22 Has Google ever offered a lower service fee to app
23 developers in response to the Apple App Store lowering its fee?

24 A. Of course.

25 Q. All right. Let me ask you to look at Exhibit 5956. And

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1 we can put it on the screen because it's already been admitted
2 into evidence.

3 A. 5956?

4 Q. Yes.

5 A. (Witness examines document.) Okay.

6 Q. And could you just tell the jury what this is?

7 A. This is an e-mail exchange between Jamie and I, Jamie
8 Rosenberg and I.

9 Q. All right. Now, if you look down at the bottom e-mail,
10 the first in time, which is from you to Jamie. Do you see
11 that?

12 A. I do.

13 Q. And in this e-mail you're referring to TV and apps for TV.
14 Do you see that?

15 A. I do.

16 Q. What is that referring to?

17 A. Well, you know, as I mentioned earlier, Android runs not
18 only on phones but also watches and other devices, including
19 TV; and the Play Store is also available on these TVs.

20 And so in this e-mail I'm asking -- we were, I think,
21 about to launch -- I don't remember the exact timing, but we
22 were launching Android for TVs, and we wanted to make sure that
23 these TVs that ran Android that had Play Store in them came
24 with all the important apps for TVs, which -- and for TVs, you
25 know, it's not really your e-mail; you care about your

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1 contents. So HBO, Showtime, and things like that. So I was
2 asking Jamie about that.

3 Q. And did this issue involve the Play Store?

4 A. Yes.

5 Q. In what way?

6 A. Well, the Play Store on the Android TV system, you go to
7 the Play Store on the TV set itself to download these apps like
8 HBO.

9 Q. All right. And then in this e-mail you say that Apple is
10 offering a 15 percent revenue share. And then you say a little
11 bit later in the same e-mail (as read):

12 "I'm worried that we're about" -- "we're about to
13 massively lose this developer base. Any ideas on what we
14 could do to remain competitive? Can we also offer
15 15 percent or something even more interesting?"

16 Could you explain to the jury what you were worried about?

17 A. Well, as I mentioned, we were launching the Play Store,
18 Android TV for -- Android TV for TVs and Play Store on TVs. We
19 needed content apps, like HBO there.

20 We were at the time charging 30 percent; and for
21 developers on IOS, Apple TV, apparently they were -- the fee
22 was 15 percent. So they had a better deal on Apple compared to
23 us.

24 And I was worried that we were going to -- when I said
25 lose this developer base, if I'm a developer, it's pretty

1 easy -- the math is pretty easy. I'm going to spend more
2 effort on where I get better money; right? More money. So
3 that's why I was saying, "Jamie, I don't want to lose these
4 developers. Can we do something to make it interesting for
5 them?"

6 **Q.** All right. We can take that down.

7 Do you recall a time when Apple announced a fee reduction
8 for subscription payments after the first year?

9 **A.** I do.

10 **Q.** All right. Could you take a look at Exhibit 706 in your
11 binder?

12 **A.** Okay. 706.

13 (Witness examines document.) Okay.

14 **Q.** And this is an e-mail that you participated in; correct?

15 **A.** Yes.

16 **Q.** And the top e-mails in this communication are between you
17 and Sameer Samat; correct?

18 **A.** Yes.

19 **MR. POMERANTZ:** Your Honor, I offer Exhibit 706.

20 **MR. BORNSTEIN:** There's no objection, Your Honor.

21 **THE COURT:** Okay. It's admitted.

22 (Trial Exhibit 706 received in evidence.)

23 **BY MR. POMERANTZ:**

24 **Q.** Let's start at the bottom here.

25 What is the gist of the e-mail from Ms. Willis? What does

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1 that say, the one at the bottom?

2 A. The e-mail, what does it say?

3 Q. Yeah. Just you don't have to read it verbatim, but just
4 the gist of it.

5 A. The summary of it?

6 Well, we were -- this is 2017. On that particular
7 Thursday we were going to announce a change to our fee on
8 Google Play related to subscriptions. So starting in, I guess,
9 a few months later, in January 1st, 2018, the fee was going to
10 become 15 percent for any subscriber a developer retains after
11 12 months -- 12 paid months.

12 Q. And if you look at the e-mail two above -- well, Mr. Samat
13 then forwards that e-mail to you. Do you see that? "+Hiroshi
14 as FYI," do you see that?

15 A. I do.

16 Q. And then you write back to Mr. Samat basically asking him
17 "What's going on here"; right?

18 A. Right.

19 Q. Okay. And then he says in response (as read):

20 "It's fine. Lowering fees to match Apple's existing
21 plan."

22 Do you see that?

23 A. I do.

24 Q. And what do you understand him to be saying to you there?

25 A. Well, basically we were -- you know, the e-mail was about

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1 lowering the fee from 30 to 15, and the additional context
2 Sameer was giving me was we were matching Apple.

3 **Q.** Okay. And we can put that one down now.

4 Isn't it important for Play to stay competitive with the
5 Apple App Store when it comes to service fees?

6 **A.** Sure.

7 **MR. BORNSTEIN:** Objection. Leading.

8 **THE COURT:** Too late now.

9 Go ahead.

10 **BY MR. POMERANTZ:**

11 **Q.** Why?

12 **A.** Why is it important to match? Well, it goes back to what
13 I was describing earlier. If you're a developer, you're in the
14 business. You know, you're trying to make money, and so fees
15 is a pretty important topic for them; and, of course, we want
16 to be competitive in terms of price.

17 **MR. POMERANTZ:** No further questions, Your Honor.

18 **THE COURT:** Okay. Any brief recross?

19 **REDIRECT EXAMINATION**

20 **BY MR. BORNSTEIN:**

21 **Q.** Mr. Lockheimer, can we stay on that document we were just
22 looking at? It's Exhibit 706.

23 **A.** Okay. 706.

24 **Q.** And I don't know if we can --

25 **TECH PERSONNEL:** Ms. Clark, can you turn it to our

1 side?

2 **MR. BORNSTEIN:** Great.

3 **BY MR. BORNSTEIN:**

4 **Q.** So if we look back at the e-mail from Ms. Willis on the
5 bottom, you can see in the second paragraph there she's
6 referring to a "comms doc" that outlines how we're
7 communicating the change. Do you see that?

8 **A.** I do.

9 **Q.** And "comms doc" is underlined signaling that that's like a
10 link that Ms. Willis is making available to you if you wanted
11 to review it; correct?

12 **A.** I think that's right.

13 **Q.** So it was a draft communication that you could look at;
14 correct?

15 **A.** Some sort of document, right, yeah.

16 **Q.** And this was -- a "comms doc" is a communications
17 document, like a public explanation of what Google was doing;
18 right?

19 **A.** Probably, right.

20 **Q.** And so up the thread there's this e-mail from you that
21 your counsel directed you to at 10:00 p.m.

22 **A.** Yes, I see it.

23 **Q.** Do you see that?

24 **A.** Yep.

25 **Q.** And the question that counsel had asked you was: What's

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1 going on here? But that's not actually what you asked here.
2 You asked "Can you give me the TLDR? I don't have access to
3 the doc"; right? That's what you said?

4 **A.** Uh-huh, yep.

5 **Q.** All right. So you're asking your colleagues not what's
6 happening to the fee but what's actually in this communication
7 document that you don't have access to; correct?

8 **A.** No.

9 **Q.** Because you already knew the fee was coming down at this
10 point, didn't you?

11 **A.** No.

12 **Q.** It was news to you that a year, a year -- actually a year
13 and a half after Apple had lowered its fee in the summer of
14 2016, you're saying this is the very first time that you as the
15 head of platforms and ecosystems were learning that Google was
16 lowering its fee; is that correct?

17 **A.** No. What I said no to was I wasn't referring to -- I
18 wasn't asking Sameer to tell me what was in the doc. The
19 reason why I said, "I don't have access to the doc," is because
20 if I had access to the doc, I would have read it myself and I
21 wouldn't have had to ask Sameer this question.

22 **Q.** Correct. You didn't have access to the doc --

23 **A.** Right.

24 **Q.** -- and so you're asking him what's in there. "Can you
25 give me the TLDR." The "Too long, didn't read"; right?

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1 A. "Too long, didn't read," exactly.

2 Q. Yeah.

3 A. I wasn't too focused on the doc. I was focused on what is
4 going on here, and he answered that question.

5 Q. Yes, but you tell him you don't have access to the
6 document, and you're asking him to tell you what's in the
7 document because you already knew as the head of platforms and
8 ecosystem that Google was changing its fee, didn't you?

9 A. I don't remember what I knew and when I knew it, but I'm
10 telling you when I said, "I don't have access to the doc," I
11 meant I could read this -- if I could have access to the doc, I
12 would read it myself, but I don't have access to it.

13 Q. Exactly. And so you're asking him to tell you what's in
14 the document, Mr. Lockheimer. That's what you were doing;
15 isn't that right?

16 A. I was asking him to tell me what Laura was referring to.

17 Q. Okay. I think it's clear enough what it says.

18 Let me ask you what it says on top from Mr. Samat where he
19 says -- can we go to the top e-mail? Thank you -- (as read):

20 "It's fine lowering fees to match Apple's existing
21 plan."

22 Do you see that?

23 A. I do.

24 Q. And so your testimony is he's not telling you what's in
25 the document; he's giving you this news about what Google is

1 doing; right? Or is he telling you what's in the document,
2 sir?

3 A. Well, Laura says it too in the e-mail.

4 Q. Correct. So they're telling you what's in this document,
5 right, in the comms plan?

6 A. I don't know what was in the document. All I know is what
7 was in this e-mail.

8 Q. Correct. So let me direct you, then, again back to
9 Ms. Willis' e-mail on the bottom.

10 A. Okay.

11 Q. She says in the second paragraph there (as read):

12 "We are not putting a lot of emphasis on it as it
13 applies only to a subset of developers."

14 Do you see that?

15 A. I do.

16 Q. All right. And then again at the top e-mail from
17 Mr. Samat he says (as read):

18 "We will not make this happen in a very vocal way.
19 It will be understated."

20 Do you see that?

21 A. I do.

22 Q. So if you were competing with Apple here, you were doing
23 it very quietly; right? You were being understated in this
24 competition; correct?

25 A. Well, Laura said -- she explains the substantive

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1 developments.

2 Q. Mr. Lockheimer, if you were competing with Apple here, you
3 were doing it in an understated and quiet way and not making
4 waves; right?

5 A. We were focusing it on the developers that this impacted,
6 the subscription developers.

7 Q. And doing it quietly; right?

8 A. Well, Sameer said subdued way or something like that.

9 Q. I think he says "understated."

10 A. Understated. Sorry.

11 Q. All right. Let's not do the thesaurus game, shall we?

12 And, in fact, you're -- also you're doing it late because
13 Apple made this change in the summer of 2016. So Google did
14 not respond quickly or competitively to the change that Apple
15 made, am I right? It took a year and a half?

16 A. It took awhile, yes.

17 Q. All right. There was some testimony about switching that
18 you gave, and I want to home in on that for a minute.

19 There is no smartphone in the world where a user can
20 access both the Google Play Store and the Apple App Store from
21 the same device; correct?

22 A. I think that's a fair statement, yes.

23 Q. Okay. Right so if I have an iPhone, I can't get on the
24 Google Play Store. If I have an Android device, I can't get on
25 the Apple App Store. Right?

1 **A.** You can use a web browser to peruse the catalogs, I guess,
2 but I don't think that's what you mean.

3 **Q.** I don't think that's what I mean either, and you know
4 that; right?

5 **A.** I'm just clarifying. I just want to be accurate.

6 **Q.** Okay. But you can't get on the store and get the
7 functionality of the store; correct?

8 **A.** Right.

9 **Q.** All right. And the percentage of people who have both an
10 Android phone and an iPhone for personal use for themselves,
11 it's very small; right?

12 **A.** I don't know the number but, sure.

13 **Q.** So for an Android user to switch to the Apple App Store,
14 that person has to get an iPhone; correct?

15 **A.** For an Android user to switch to the Apple App Store, they
16 would have to buy an iPhone, yes.

17 **Q.** And vice versa, the iPhone user who wants to get on the
18 Google Play Store has to get an Android device; correct?

19 **A.** That's correct.

20 **Q.** And there are costs to a user for switching from one
21 device to another; correct?

22 **A.** Typically.

23 **Q.** Right. For one thing, you have to buy a new phone;
24 correct?

25 **A.** Buy, but a lot of times you can get phones for free these

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1 days.

2 Q. Right. You have to acquire a new phone either by paying
3 for it or signing up to some kind of contract that obligates
4 you to a service plan with a carrier; correct?

5 A. Many people do that.

6 Q. Right. So you have to shell out money either immediately
7 or over time with a carrier, correct --

8 A. Sure.

9 Q. -- as part of the switch?

10 And I think we've established now users don't switch every
11 six months, but I think you said every two or three years;
12 correct?

13 A. I think that's more typical than every six months,
14 certainly.

15 Q. So do I.

16 Once a smartphone user gets used to a certain type of user
17 experience, it takes a lot of energy for them to say that they
18 are going to switch; right? That's one of the costs?

19 A. I would agree.

20 Q. Because people are sometimes concerned or people are
21 concerned about how much time it might take them to switch from
22 one OS to another; correct?

23 A. Yes.

24 Q. And people are not looking forward to spending time
25 switching devices?

1 A. Some people do, but not everyone, I agree.

2 Q. Set aside the people who are Google executives and
3 techies, most people don't look forward to switching OSs;
4 correct?

5 A. (No audible response.)

6 Q. Now, consumers who have another device within the
7 ecosystem, like an Apple Watch, those people are much more
8 likely to stay within the particular ecosystem of devices; is
9 that correct?

10 A. That's true.

11 Q. And Google has studies that prove this; correct?

12 A. I don't know if it proves it but, yes, we have studies.

13 Q. You have studies that support what I just said; correct?

14 A. That's right.

15 Q. All right. And, in fact, those studies I'm referring to,
16 they show that around 97 percent of people with an Apple Watch
17 or another Apple product will not switch to Android; correct?

18 A. I've seen a similar study, yeah.

19 Q. Right. And for those users, it is pretty impossible to
20 get them to switch from iPhone to Android; correct?

21 A. It's challenging. It's challenging.

22 Q. Pretty impossible, that's actually your words; right?
23 It's pretty impossible to get them to switch?

24 A. Maybe, yep.

25 Q. Is that what you testified at your deposition? You said,

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1 "Pretty impossible to get them to switch"?

2 **A.** I don't remember the exact words I used; but, yeah, sure.
3 Challenging, pretty impossible, sure.

4 **Q.** Can we take a quick look at the document that you looked
5 at with your counsel, 5932. It should be in the binder you got
6 from Mr. Pomerantz.

7 **A.** 5932. Okay.

8 **Q.** And I'd ask you to look at Slide 30, please.

9 **A.** 30?

10 **Q.** Yeah, 30.

11 **A.** (Witness examines document.) Yep. Yep. I'm here.

12 **Q.** Great.

13 And what we see on Slide 30 is something that says (as
14 read):

15 "People are no longer buying devices. They're
16 building ecosystems."

17 Correct?

18 **A.** I see that.

19 **Q.** And there at the bottom, the last substantive bullet
20 point, explains that (as read):

21 "How well it connects to devices in my tech setup is
22 the number one driver for people considering a new
23 device." Correct?

24 **A.** That's what it says, yeah.

25 **Q.** Not the app store that drives -- is the number one driver;

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1 correct?

2 **A.** According to this document, they're talking about the
3 connecting to new devices in my tech setup.

4 **Q.** Correct. And as we sat here today and listened to your
5 testimony, we had a fabulous advertisement for the foldable
6 phone; correct?

7 **A.** Glad you enjoyed it.

8 **Q.** I did very much.

9 And that was hardware; right? You're talking about the
10 way in which Android hardware is differentiated from Apple
11 hardware. That's what you were talking about; correct?

12 **A.** No, actually, because the hardware requires software.

13 **Q.** Right. But you were demonstrating the features of the
14 hardware: The foldability, the form factor. Those are the
15 things that you sat there on the stand, Mr. Lockheimer, and
16 testified to as the differentiating features of those
17 particular devices; correct?

18 **A.** I disagree with that characterization.

19 **Q.** Okay. Let me talk about Epic for a moment.

20 There were a couple of questions there at the end about
21 the security vulnerability and the release of the information
22 to the public. Do you recall that?

23 **A.** I do.

24 **Q.** And you testified that the articles that were written were
25 based on the bug that had been made public. Do you sign onto

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1 that testimony again?

2 **A.** I believe so. If we had more time to look at the e-mail,
3 maybe we could check.

4 **Q.** Let's do that. Let's look at the e-mail.

5 I would like to take a look at Exhibit 1386. This is the
6 binder I gave you, the big one.

7 **A.** All right. One second.

8 (Witness examines document.) 1386?

9 **Q.** Correct. And while you're getting it, we'll get it up on
10 the screen.

11 **A.** (Witness examines document.) 1386, yep.

12 **Q.** Now, it wasn't the case that Google waited for the bug to
13 become public through ordinary processes and then went out and
14 had innocent conversations with reporters about a piece of
15 public information; right? That's not what happened; correct?

16 **A.** Sorry. One more time, please.

17 **Q.** It is not the case, as you suggested in your testimony to
18 your counsel a few moments ago, that this bug just became
19 public through your ordinary processes, and then and only then
20 were there discussions that happened with reporters?

21 **A.** I'm not sure what you mean.

22 **Q.** Okay. So you don't know the sequence, then, of when
23 people spoke to reporters versus when the bug became public; is
24 that correct?

25 Don't look at the document. Do you know, Mr. Lockheimer,

1 what the answer is? Which came first? Google talking to
2 reporters or the bug becoming public?

3 **A.** My understanding is the reporters were pointed at the bug
4 that was public.

5 **Q.** And how did that happen?

6 **A.** How did the bug become public?

7 **Q.** No. How did the reporters start to look?

8 **A.** It seems like someone on the team let them know about it.

9 **Q.** Right. So what happened, if we look at page 007, is as
10 part of the plan of action that we talked about before,
11 Ms. Newberry, your PR person, writes in the middle (as read):

12 "Once the bug is live tomorrow, I'll tip off the
13 reporters."

14 Correct?

15 **A.** Right.

16 **Q.** And then --

17 **A.** So I guess she's establishing the timeline there.

18 **Q.** Yes. And then she worked to shape those stories with
19 Android Central; correct?

20 **A.** I forget the exact phrasing she mentioned, but something
21 along those lines, yeah.

22 **Q.** And none of that is standard ordinary process for security
23 vulnerabilities released by Google. This was a special effort
24 made because of what was happening with Epic; correct?

25 **A.** I don't know.

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1 Q. All right.

2 MR. BORNSTEIN: No further questions, Your Honor.

3 MR. POMERANTZ: Your Honor, may I have one minute to
4 follow-up on that one document?

5 THE COURT: Okay.

6 MR. POMERANTZ: Thank you.

7 Can we put page 7 of Exhibit 1386 on the screen?

8 And if we could focus in on the e-mail at the bottom half
9 of the -- yeah, starting there and all the way to the bottom.

10 RECROSS-EXAMINATION

11 BY MR. POMERANTZ:

12 Q. All right. So, Mr. Lockheimer, I want to see if this
13 refreshes your recollection.

14 A. Okay.

15 Q. The bottom e-mail is from Ed Cunningham. Do you see that?

16 A. I do.

17 Q. What is his position at Google?

18 A. He was, I believe, a product manager in the security team.

19 Q. All right. And he says (as read):

20 "I have informed the Epic security team via e-mail
21 that the bug will be made public tomorrow."

22 Do you see that?

23 A. I do.

24 Q. And is that part of the standard procedures for dealing
25 with security bugs?

PROCEEDINGS

1 **A.** I believe so, yeah. You let the other entity know that
2 there's an issue with their -- whatever their software is.

3 **Q.** And then the next e-mail up says (as read):

4 "Once the bug is live tomorrow, I'll tip off the
5 reporters."

6 Do you see that?

7 **A.** I do.

8 **Q.** So do you understand what it means to say "Once the bug is
9 live"?

10 **A.** Once it's public.

11 **Q.** Okay. So the tipoff occurred after it was made public;
12 correct?

13 **A.** Right.

14 **MR. POMERANTZ:** All right. No further questions,
15 Your Honor.

16 **THE COURT:** Okay. You may step down.

17 (Witness excused.)

18 **THE COURT:** All right. We're going to part company
19 for the night. Put everything out of mind, out of sight in
20 terms of any media coverage, out of mind in terms of any
21 thinking, researching, investigating of any sort.

22 This morning was better than I expected in terms of the
23 drive in. It may not be an indicator for tomorrow, but why
24 don't we -- we'll start at 9:15 tomorrow. Okay? And if it's
25 equally good tomorrow, we'll go back to 9:00 on Monday. All

1 right?

2 Well, no, actually Monday is fine. Is tomorrow Wednesday
3 or Thursday?

4 **THE CLERK:** Wednesday.

5 **THE COURT:** Oh, okay. We'll go back to 9:00 on
6 Wednesday -- Thursday. Okay?

7 All right. See you tomorrow.

8 **THE CLERK:** All rise.

9 (Proceedings were heard out of the presence of the jury:)

10 **THE COURT:** Okay. Are we all set for tomorrow? Yes?

11 **MR. BORNSTEIN:** So, Your Honor, we have two live
12 witnesses for sure tomorrow. We also have at least two
13 depositions that we were contemplating, and they are both
14 subject to pending disputes that have been submitted to the
15 Court. One is the Spotify matter that was briefed over the
16 weekend; the other is the Amazon material that I handed up
17 yesterday.

18 **THE COURT:** All right. The only objection to that --
19 is this the Donn Morrill thing?

20 **MR. BORNSTEIN:** Correct, Your Honor.

21 **THE COURT:** So the only objection from Google is lack
22 of personal knowledge?

23 **MR. KRAVIS:** Yes, Your Honor, that the -- is the
24 Wright-Miller treatise notes and --

25 **THE COURT:** Okay.

PROCEEDINGS

1 **MR. KRAVIS:** Yes.

2 **THE COURT:** And is he testifying as a 30(b)(6)
3 designee?

4 **MR. KRAVIS:** At the deposition.

5 **THE COURT:** He doesn't have to have personal
6 knowledge. He's the corporate spokesperson. The very function
7 of a 30(b)(6) witness is to be educated about things that he or
8 she in fact does not have personal knowledge about, so that
9 that person can speak for the inanimate entity, the
10 corporation.

11 So that objection is overruled. Okay?

12 **MR. BORNSTEIN:** Thank you, Your Honor.

13 So we'll get that one on tomorrow and whenever we have the
14 Spotify issue resolved, we can play that too.

15 **THE COURT:** All right. See you in the morning.

16 **MR. BORNSTEIN:** Thank you very much.

17 **THE CLERK:** All rise. Court's in recess.

18 (Proceedings adjourned at 3:52 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, November 14, 2023

A handwritten signature in black ink, reading "Kelly Shainline", is written over a horizontal line.

Kelly Shainline, CSR No. 13476, RPR, CRR
U.S. Court Reporter